

CITY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1010
Tuesday, September 22, 2009, 1:00 p.m.
Tulsa City Council Chambers
One Technology Center
175 East 2nd Street

**MEMBERS
PRESENT**

Henke, Chair
Stead, Vice Chair
Tidwell, Secretary
Van De Wiele
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, September 16, 2009, at 12:04 p.m., as well as at the Office of INCOG, 2 West Second Street, Suite 800.

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 (White, Henke, Stead, Tidwell, Van De Wiele "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** the Minutes of September 8, 2009 (No. 1009)

REQUEST TO CONTINUE AND CASES TO WITHDRAW

Case No. 20975

Action Requested:

Variance of the minimum setback requirement for a detached accessory building located in the required rear yard from 3 ft. to .7 ft. (Section 210.B.5.b); a Variance of the maximum permitted coverage of a required rear yard by a detached

accessory building in the RS-3 district from 30% to 40.8% (Section 210.B.5.a);; to permit a new detached accessory building, located: 2628 East 14th Street.

Presentation:

Mr. Cuthbertson informed the Board that it was determined the existing frame for the detached structure is taller than the code allows. In order to re-advertise the application could not be heard before October 13, 2009.

Interested Parties:

There were no interested parties present.

Board Action:

On **Motion** of **White**, the Board voted 5-0-0 (White, Van De Wiele, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **CONTINUE** Case No 20975 to the meeting on October 13, 2009, on the following described property:

LT 6 BLK 2, CITY VIEW HILL ADDN, City of Tulsa, Tulsa County, State of Oklahoma

Case No. 20976

Action Requested:

Special Exception to permit a manufactured home in the RS-3 district (Section 401); and a Special Exception to extend the one year time limit on a mobile home in the R district to permit it permanently (Section 404.E.1), located: 2208 North Canton Avenue.

Presentation:

Mr. Cuthbertson informed the Board there were discrepancies in the width of the property and the site plan submitted. Due to unforeseen circumstances, the applicant would not be able to present it until the October 27, 2009 hearing.

Interested Parties:

There were no interested parties present.

Board Action:

On **Motion** of **White**, the Board voted 5-0-0 (White, Van De Wiele, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **CONTINUE** Case No. 20976 to the meeting on October 27, 2009, on the following described property:

E 305.5' OF N. 1/2 LT 11 BLK 1, S R LEWIS ADDN, City of Tulsa, Tulsa County, State of Oklahoma

UNFINISHED BUSINESS

Case No. 20967

Action Requested:

Variance to permit an outdoor advertising sign outside of a freeway sign corridor (Section 1221.F.1), located: 9955 East 21st Street South.

Presentation:

Mr. Cuthbertson reminded the Board that at the last meeting, Mr. Boulden questioned if the Board had the authority to grant this request.

Mr. Boulden stated that according to his comparison of the state statutes, governing Boards of Adjustment, Title 11, §44104, and the City of Tulsa Zoning Code in Section 1607 regarding variances, the city ordinances appear to be stronger. He pointed out that the city ordinances only permit an outdoor advertising sign in a CS district when it is within a freeway sign corridor. He added that this sign is not in a freeway corridor, and it is not advertising a business on the lot where the sign would be located. He believed this request would be a use variance. The Board of Adjustment does not have the authority to grant use variances.

Bryan Ward, 9520 East 55th Place, Tulsa, Oklahoma, was interested in considering another location on the lot. He asked for a continuance to the next meeting.

Interested Parties:

There were no interested parties.

Board Action:

On **Motion of White**, the Board voted 5-0-0 (White, Van De Wiele, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **CONTINUE** Case No. 20967 to the meeting on October 13, 2009, on the following described property:

LTS 1 & 2 LESS W447.79 LT 1 BLK 2, MAGIC CIRCLE SOUTH ADDN, City of Tulsa, Tulsa County, State of Oklahoma

NEW APPLICATIONS

Case No. 20969

Action Requested:

Variance of the maximum amount of required front yard permitted to be covered with an all-weather surface in the RS-3 district from 34% to 62% on the cul-de-sac lot (Section 1303.D), located: 18513 East 46th Street.

Presentation:

Gay Jacobs, 4619 South 177th East Place, Tulsa, Oklahoma, represented the applicant.

Comments and Questions:

Ms. Stead verified the surface of the drive is concrete. She noted the lot is narrow at the street; and that marketing trends are not the same as several years ago. She verified with Ms. Jacobs that the site plan provided (Exhibit A-1) is exactly as they plan to build.

Interested Parties:

Walter Crisp, 4605 S 180th East Avenue, Tulsa, Oklahoma, 74134, stated he was not clear what the request involved. After hearing the details he was in support of the application.

Board Action:

On **Motion of Stead**, the Board voted 5-0-0 (White, Van De Wiele, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") **APPROVE** a Variance of the maximum amount of required front yard permitted to be covered with an all-weather surface in the RS-3 district from 34% to 62% on the cul-de-sac lot (Section 1303.D), this approval is specific to Lot 19, Block 2, Stonegate II Addition only, and not the entire addition; the surface of all drives are to be concrete, finding this 37 ft. wide lot is narrower at the street than a typical 60 ft. width required in an RS-3 area, auto uses and marketing trends have changed since the zoning code was implemented, approved per plan as shown on page 3.6 of the agenda packet; in granting the variance the Board found extraordinary, exceptional conditions, and 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 19, Blk 2, STONEGATE II, City of Tulsa, Tulsa County, State of Oklahoma

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Case No. 20971

Action Requested:

Special Exception to permit a community center/neighborhood pool (Use Unit 5) in an R district (Section 401), located: 4707 South 185th East Avenue.

Presentation:

Dwight Claxton, 4404 East 111th Street, Tulsa, Oklahoma, was present for this application (Exhibit B-1).

Comments and Questions:

Ms. Stead reviewed some of the requirements regarding parking, lighting, and landscaping for the applicant. She asked Mr. Claxton about the location of sidewalks. Mr. Claxton stated there is a sidewalk along 185th Street and he was depending on the City to give direction for any other required sidewalks. Mr. Cuthbertson stated that on the west side of the property from the north property line abutting 185th Street to the south end of the property, a sidewalk will be required inside the right-of-way. Ms. Stead asked where the pool house entry is located. He indicated a gate would be on the south side. Mr. Cuthbertson added there is a screening requirement from the R district applying only to the parking lot.

Interested Parties:

There were no interested parties who wished to speak.

Board Action:

On **Motion of Stead**, the Board voted 5-0-0 (White, Van De Wiele, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a Special Exception to permit a community center/neighborhood pool (Use Unit 5) in an R district (Section 401), with conditions: there shall be screening on the south and north as far as the parking lot extends, per code; all lighting shall be shielded from surrounding R properties; parking areas subject to City landscaping requirements; establish sidewalks on the plan abutting the public street, South 185th East Avenue; as this is not a public pool, the Board recommends the pool be managed by the neighborhood association or other association and be restricted to use by property owners and guests in this and surrounding neighborhoods; per plan as shown on page 4.5 of the agenda packet; in granting this special exception, the Board found 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:

Reserve Area A, Stonegate II, City of Tulsa, Tulsa County, State of Oklahoma

Case No. 20972

Action Requested:

Variance of the 100 ft. building setback requirement from the centerline of an abutting arterial street to 80 ft. (Section 903), located: 4021 North Mingo Road.

Presentation:

Shawn Elwood, 5929 North May, Suite 411, Oklahoma City, Oklahoma, 73112 pointed out where the site is located (Exhibit C-1). He stated it is an AT&T

Interested Parties:

Leon Ragsdale, 1615 North 24th West Avenue, Tulsa, Oklahoma, 74127, stated he is an architect. He added that the parking spaces for the daycare on the west are on the inside of the retaining wall. The parking spaces on the west side of the retaining wall are not for the daycare. The parking areas are on the northwest, southwest and southeast corner. They will remove the barbed wire and build a fence compatible with the existing fencing.

Comments and Questions:

Ms. Stead asked about the hours of operation. Ms. Jordan replied the hours would be 6:00 a.m. to 6:00 p.m., five days per week.

In Board member discussion, Ms. Stead was not in favor of limiting the hours of operation, considering it is not a home daycare and is located in an industrial area. She suggested they may want to expand the days and hours of service at some time in the future.

Board Action:

On **Motion of Stead**, the Board voted 5-0-0 (White, Van De Wiele, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a Special Exception to permit a children's nursery (Use Unit 5) in an IL district (Section 901), subject to the plan on page 6.6 in the agenda packet, but noting the parking shown on the west side of the retaining wall is not a part of the property being considered; noting that the 13' 10" open space on the west will be fenced to match the new fence as shown on the plan; maintenance of sidewalk along North Utica to provide a good walking surface; the existing gate on the south side facing the east will be replaced with solid fencing next to the playground area; finding in granting the special exception, 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:

LTS 1 & 2 & N 1/2 LT 3 BLK 1, UTICA HGTS ADDN, City of Tulsa, Tulsa County, State of Oklahoma

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Case No. 20974

Action Requested:

Special Exception to permit a home occupation (gunsmith) in an RS-2 district (Section 402.B.6), located: 5138 East 25th Place South.

Presentation:

Donald Franson, 5138 East 25th Place South, Tulsa, Oklahoma, 74114, proposed to have a gunsmith home occupation. He explained this would be strictly for gun repair, and no sales from his home.

Comments and Questions:

Ms. Stead noted in the federal regulations that a license would allow him to buy and sell guns. Mr. Franson responded that if he wanted to sell retail, he would be required to obtain a different license. He stated he has no plans to sell guns. He added that in the state of Oklahoma, you are not required to have a license to buy and sell guns. He explained that if he brings a gun home for cleaning or repair for more than 24 hours, he has to register it. If he sells a gun he has to go through an approval process to sell the gun. Ms. Stead remembered a restriction of gun activity within 1,000 ft. of a school. Mr. Franson stated there are exceptions to the 1,000 ft. school zone restriction. He replied that this restriction does not apply to the possession of a firearm on private property, or a gun not loaded and in a locked container or locked firearm rack on a motor vehicle. He has to have the firearm in a locked box when he carries it into his home. Mr. Henke asked if customers would bring guns to his home. He replied that he might have an occasional customer come to his home. Mr. Franson stated that a number of gun stores cannot keep a gunsmith in their store. He added that it would not work for him to travel from one store to another, as there are too many tools involved. The gun shop owners are willing to send the guns with him for repair. Mr. Franson described a living area in his home that he plans to use for the home occupation, which is 20' x 21'. It has a separate entrance and a sidewalk to the street. He prefers not to have customers going to his house. Mr. Van De Wiele asked if he has to fire the weapon after he fixes it. Mr. Franson replied that he does not, but if he did need to, he can take it to the Tulsa Gun Club. In reply to questions from Mr. White, he stated he would work on Class I weapons only; and he does not do conversions.

Interested Parties:

Bill Lloyd, 5722 East 22nd Street, Tulsa, Oklahoma, 74114, opposed the application because of the location in a residential district. He considered it an invitation to criminal activity, specifically theft. Ms. Stead asked if he has a gun in his home, and Mr. Lloyd replied that he does.

Monica Pulaski, 5320 East 25th Place, Tulsa, Oklahoma, 74114, was opposed because of the proximity to the school, decreased property value, invitation to theft, and a danger to public safety. She was opposed to a business in the residential neighborhood. She stated there have been home burglaries in the neighborhood.

Virgie Howland, 5316 East 25th Place, Tulsa, Oklahoma, 74114, stated she was opposed to this home occupation in the neighborhood and near the school. They have an active neighborhood watch because of some criminal activity. She indicated that she was the only neighbor who received notice.

Mr. Cuthbertson informed the Board of the number of property owners that received notice, plus neighborhood association representatives, and the city councilor. He added that none of the notices were returned undeliverable. The

County Assessor provides the list of property owners within 300 ft. of the subject property.

Betty Smittle, 5319 East 25th Place, Tulsa, Oklahoma, 74114, objected to the application for reasons already stated. She stated that she lives within 300 ft. but did not receive a notice.

Peggy Caden, 5125 East 25th Place, Tulsa, Oklahoma, questioned how the business would be handled and how the code would be enforced.

Mr. Lloyd was recognized by the Board to speak again. He was interested in how well the home is protected.

Applicant's Rebuttal:

Mr. Franson responded to Mr. Tidwell that he would have about one or two customer guns per day at his home. He stated that he has a small, high security safe, 4' x 6' vault with double doors, rated for three-hour fire protection. He added that he has a security system in his home. The vault is within the 500 sq. ft. work area for the home occupation. He indicated he tries to use organic chemicals for his work. He has to sign an agreement to the water protection act. He added that he has run a mobile automotive touch-up painting business, which he is selling. The chemicals are sent off for recycling.

Ms. Smittle was recognized again by the Board to speak. She asked how long the applicant has been doing gun-smithing.

Mr. Franson responded that he has been taking the schooling and has been doing gun-smithing for two years as a hobby.

In Board discussion, Mr. White thought the residential location would be more secure than in a commercial shopping center, which would not be occupied 24/7. He stated this is a machine tool procedure not the firing of firearms. As far as the commercial aspect, he noted two beauty shops were approved by the Board in the neighborhood. Mr. Van De Wiele stated his concerns would be any noise disturbance from mechanical equipment, and customers going to the subject property. He suggested a time limitation if the Board decided to approve this application. Mr. Tidwell suggested the time limitation to coincide with Mr. Franson's license. After reviewing the federal regulation regarding accessibility to customers, Mr. Boulden stated he did not think it would prevent Mr. Franson from obtaining his license if he did not have customers come to his property.

Board Action:

On **Motion of White**, the Board voted 4-1-0 (White, Van De Wiele, Henke, Tidwell "aye"; Stead "nay"; no "abstentions"; no "absences") to **APPROVE** a Special Exception to permit a home occupation (gunsmith) in an RS-2 district (Section 402.B.6), with conditions for no firearms or ammunition sales; no on-site customers; approval for five years from September 22, 2009; no signage; 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:

LT 6 BLK 7, GRACEMONT THIRD ADDN CONT, City of Tulsa, Tulsa County, State of Oklahoma

New Business

Mr. Cuthbertson mentioned a proposed training session for the Board on October 27, 2009 before the regularly scheduled meeting. He informed the Board that the Board meeting for that day already has fifteen items on the agenda at this time. The Board and staff decided to discuss later if they would have the training session on that date.

There being no further business, the meeting adjourned at 2:39 p.m.

Date approved: 10-13-09

Clayton M. Sted
Chair