

CITY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1019
Tuesday, February 23, 2010, 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**

None

**STAFF
PRESENT**

Alberty
Cuthbertson
Zezulka

**OTHERS
PRESENT**

Boulden, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Wednesday, February 17, at 3:58 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") to **APPROVE** the Minutes of February 9, 2010 (No. 1018).

Mr. Henke stated that item 7 has requested a continuance.

Case No. 21032

Action Requested:

Variance of the maximum number of signs permitted in the OM district (Section 602.B.4) to permit two wall signs on an existing building, **(continued to 3/9/2010)**.

Comments and Questions:

Mr. Cuthbertson stated there is a request to continue this application to allow for a new notice for an additional request.

Interested Parties:

There were no interested parties.

Board Action:

On **Motion of White**, the Board voted 5-0-0 (White, Stead, Tidwell, Henke, Van De Wiele "aye"; no "nays"; no "abstentions"); to **APPROVE** the continuance of Case No. 21027 until the March 9, 2010.

PRT LT 1 BEG 512.76N SECR TH W300.01 N583.06 E300.03 S583.07 POB BLK 2, BURNING HILLS, City of Tulsa, Tulsa County, State of Oklahoma

UNFINISHED BUSINESS

NEW APPLICATIONS

Case No. 21027

Action Requested:

Variance of the maximum permitted coverage for a detached accessory building located in the required rear yard in the RS-2 district from 25% (Section 210.B.5.a) and a modification of a previously approved plan (BOA-16824) to permit a covered patio.

Presentation:

Steven Schuller 100 West 5th Street, Tulsa, Oklahoma, stated the neighborhood was developed in the early 1920s before zoning was in effect. The lot is substandard in size and irregular in shape; this property was not developed in accordance with the RS-2 zoning. The covered portion of the patio sets in motion the question of the livability space.

Comments and Questions:

Ms. Stead inquired as to the square footage of the rear yard with the current detached accessory building.

Mr. Cuthbertson explained that the existing detached accessory building covers 361.8 sq. ft of the rear yard.

Interested Parties:

There were no interested parties.

Board Action:

On **Motion** of **Stead**, the Board voted 5-0-0 (White, Stead, Tidwell, Henke, Van De Wiele "aye"; no "nays"; no "abstentions"); to **APPROVE** a variance of the maximum permitted coverage for a detached accessory building located in the required rear yard in the RS-2 district from 25% (Section 210.B.5.a) and a modification of a previously approved plan (BOA-16824) to permit a covered patio. Per plot plan on page 2.6 finding: that this property and others in the same area were developed long before the existing code that the lot was platted at 7,503 sq. ft. instead of 9,000 sq. ft according to the RS-2 designation, which is a hardship. In addition, the property line angles away from the area provided for a detracted building and the lot is shallow. We find that by reason of extraordinary or exceptional conditions, 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.

LT 4 BLK 8, SUNSET TERRACE, City of Tulsa, Tulsa County, State of Oklahoma

Case No. 21029

Action Requested:

Variance of the maximum display surface area permitted for signage in the CS district for two (2) signs on one property from 373 sq. ft. to 801 sq. ft. (Section 1221.D.3); and a Variance of the minimum 30 ft. of separation between ground signs (Section 1221.C.9)

Presentation:

Steven Schuller 100 West 5th Street, Tulsa, Oklahoma, the staff has made the statement in the case report that it does not believe that a variance on the display surface area is necessary in this application. The Development Services office required a variance be granted on the issue of the maximum display surface.

Comments and Questions:

Ms. Stead said she agrees that Development Services staff did not take into account that the Broken Arrow Expressway, 129th and 51st Streets would justify more signage space. However, we do need to make that observation.

Mr. Cuthbertson stated it would be helpful to Development Services for the Board to provide them with a documented interpretation of this provision of the ordinance. There is a basic question when determining that provision of the ordinance. The practice now with multiple major frontages is that they are looked at in isolation and base their display space and the number of signs permitted on that one segment of frontage. The subject property has three major street frontages and the Code permits more than one sign: the property gets one sq. ft. display area for one sq. ft. per lineal foot of frontage.

Shannon Bengé, Development Services Staff member gave the historical prospective, Development Services has looked at each lineal frontage separately because the term "lineal" actually comes from the term "linear"—a straight line—we go to Webster's Dictionary, which defines "lineal" as a straight line so that is why the frontages have been taken separately. This practice has been followed as long as the sign ordinance has been enforced.

Ms. Stead asked if one cannot take three major streets, add the lineal footage, and get what is permitted on a sign.

Mrs. Bengé stated if there were three 100-foot frontages on a major street that would be 300 feet. If you put in one sign, you would be allowed a maximum of 500 sq. ft. When you have two signs, it drops down to one sq. ft. per lineal foot of frontage; that would be 300 square feet. If you combine all three sides, that would allow 300-feet of sign surface. If you put up two 150 sq. ft. signs, that meets the maximum of 300 lineal feet. Development Services is concerned with changing the interpretation of the ordinance.

Mr. Van De Wiele asked if the word "aggregate" appeared in the code, staff confirmed that the word "aggregate" does appear in the code. His thought was that the lineal footage is a measuring tool for the calculation for how much square footage one has and it does not limit it per side.

Interested Parties:

There were no interested parties.

Board Action:

On **Motion of Van De Wiele**, the Board voted 5-0-0 (White, Stead, Tidwell, Henke, Van De Wiele "aye"; no "nays"; no "abstentions"); to approve the following interpretation: Mr. Chairman, as to (Section 1221.D.3), of the Code the Board has reached the conclusion that it is the calculation of square footage, under the Tulsa Zoning Code for signage surface area, which is based on lineal feet of street frontage, which shall not be limited on a per street frontage basis, but shall be taken in the aggregate for the lot in question.

As a result of the Board interpretation it was determined that the variance of the maximum display surface area permitted for signage in the CS district for two (2) signs on one property from 373 sq. ft. to 801 sq. ft. was not necessary.

Mr. Schuller cited Zoning Code (Section 1221.C. 9), which requires a minimum of 30 ft. of separation between ground signs. Any possible sign location along the freeway for this particular property would block the existing outdoor advertising sign. This particular property has four unique circumstances, which create a hardship. One is the unusual shape of the property. Second, it is the unusual location of the property, which is bounded on three of its four sides by two major streets and a freeway.

Third, the most critical, is the billboard easement, which was filed for record in 2008 before the client acquired the property, and which restricts or prohibits any structure, that obstructs or interferes with visibility of the graphics or advertising copy on any billboard sign by vehicle occupants moving in either direction on the adjacent freeway. There is an existing billboard structure in the southeast corner of the property. Any location of the proposed business sign would block the view of the outdoor advertising sign. The only location for the sign is next to the billboard so that it does not block the billboard. In addition, a highway easement covers part of the property. It is 65 feet in width and the sign cannot be placed in the ODOT easement; there is not enough space between the sign structure and the ODOT easement in order to obtain the 30-foot minimum separation between signs. The owner of the current outdoor sign has no problem with the placement of the new sign.

Mr. Henke questioned the hardship since the property owner knew of the easement when the property was purchased.

Mr. Van De Wiele asked the distance between the signs.

Mr. Schuller explained that the advertising space would be five feet apart and even at the top.

Interested Parties:

James Adair, 7508 E. 77th Street, Tulsa, Oklahoma, helped change the sign codes and a few of the things the committee did was reduce the number of signs, lower the height of signs and added the separation restriction of 30 feet. The restriction of 30 feet was meant to restrict abutting business/neighbors, to eliminate individuals putting a sign a foot away from their property line and then someone else coming back and putting a sign a foot away from their property line. The intent of the 30-foot separation was to protect one business from another not to limit two businesses in agreement on the same property.

Scott Trizza, 1011 N Cheyenne Ave., Tulsa, Oklahoma, said he knows there is a proposal to put roof top signs in the downtown.

Ms. Stead stated the roof top signs are only going to apply to downtown not any other property.

Discussion between the Board and the applicant related to possible alternative locations for the business sign ensued.

Board Action:

On **Motion of White**, the Board voted 4-1-0 (White, Stead, Tidwell, Van De Wiele "aye"; Henke "nay"; no "abstentions"); to **APPROVE** a variance of the minimum 30 ft. of separation between ground signs (Section 1221.C.9). Finding: the hardship to be the preexistence of the ODOT and the sign easement on the property, which makes

the location of the requested sign, be impractical at any other location on the property to comply with the existing easement and right-of-way. In accordance with plan 3.5 and 3.6 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.

A TRACT OF LAND THAT IS PART OF THE NORTHEAST QUARTER (NE/4) OF SECTION THIRTY-TWO (32), TOWNSHIP NINETEEN (19) NORTH, RANGE FOURTEEN (14) EAST OF THE INDIAN BASE AND MERIDIAN, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE U.S. GOVERNMENT SURVEY THEREOF, SAID TRACT OF LAND BEING DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION THIRTY-TWO (32); THENCE SOUTH 00°05'30" EAST ALONG THE EAST LINE THEREOF A DISTANCE OF 79.01 FEET; THENCE SOUTH 89°54'30" WEST A DISTANCE OF 50.00 FEET TO A POINT THAT IS THE POINT OF BEGINNING OF SAID TRACT OF LAND; THENCE SOUTH 00°05'30" EAST AND PARALLEL TO THE EAST LINE THEREOF A DISTANCE OF 423.14 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF THE BROKEN ARROW EXPRESSWAY; THENCE NORTH 58°57'30" WEST ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 373.14 FEET; THENCE NORTH 00°05'25" EAST A DISTANCE OF 252.39 FEET TO A POINT LYING 58.00 FEET SOUTH OF THE NORTH LINE OF SAID SECTION THIRTY-TWO (32); THENCE SOUTH 89°54'35" EAST AND PARALLEL TO SAID NORTH LINE A DISTANCE OF 297.43 FEET; THENCE SOUTH 45°00'02" EAST A DISTANCE OF 29.98 FEET TO THE POINT OF BEGINNING OF SAID TRACT OF LAND.

Case No. 21030

Action Requested:

Special Exception to modify the height of a fence in the required front yard in the RS-3 district from 4 ft. to 6 ft. (Section 210.B.3).

Presentation:

Michael Callahan, 1149 E. 13th Street, Tulsa, Oklahoma, said that this is the original 1922 address for this property. Sometime before the 1970s the address was changed to the Owasso Avenue address. In October 2008, the City was asked to change the address to the front of the house, 1149 E. 13th Street; the original address is recorded at the City of Tulsa, Address Division, Fourth floor. According to the ordinance, the owner of the property on a corner decides the front of the house. In essence, the owners are not requesting a hardship to place a 6ft. fence in our front yard.

Comments and Questions:

Ms. Stead asked that since that is primary to the case, did the applicant read the minutes from the last meeting, where Mr. Ackerman stated that the zoning official determined that the yard on Owasso is the front yard. Mr. Ackerman also informed the applicant that since he did not appeal that determination, Owasso is the front yard.

Ms. Stead said that if this plot plan is right, part of the fence is in your front yard.

Interested Parties:

Fred Kumpf, 1221 Newport Avenue, Tulsa, Oklahoma, said that in the attachment he sent to the Board was a copy of a deed with a restriction; the main part of that restriction was the main portion of the residence built thereon, except open porches, shall not be built or extended within forty feet from the front lot line.

Mr. Boulden indicated the Board cannot deal with deed restrictions; however, they can decide if it is injurious to the neighborhood.

Fred Kumpf said that restrictions in the deed made it the only way to obtain a 40 ft. setback is from the Owasso Avenue side.

Jeff Nofhger, 1233 S. Newport Avenue, Tulsa, Oklahoma, Code enforcement officer Kevin Cox is here today because of time restrictions he will be leaving I would request that if the Board has any questions of him they speak to him.

Kevin Cox, City of Tulsa, Neighborhood Services Department, said that after receiving the complaint, the property was inspected from all angles and it was clear from one of the past Board of Adjustment cases that the Board made the determination that if the fence built on the Owasso side did not the rear setback requirement, the fence in itself was a violation.

Jeff Nofhger, 1233 S. Newport Avenue, Tulsa, Oklahoma, currently, the Tracy Park Historical Neighbors President, indicated that this is the third time this matter has come before this Board. The Board previously determined that the front yard of the house is on the Owasso Avenue side. Mr. Nofhger requests that the Board deny.

Christina Birch, 1235 S. Owasso Avenue, Tulsa, Oklahoma, said that Tracy Park is not a 1920s style neighborhood. It is on the National Register as eclectic neighborhood, meaning that each house is different. Ms. Birch supported the application.

Kelli Blown, 1239 S. Owasso Avenue, Tulsa, Oklahoma, said she lived in the area for 20 years, and 13th Street was a highway before the Broken Arrow Expressway opened. Ms. Blown supported the application.

Chip Atkins, 1638 E. 17th Place, Tulsa, Oklahoma, presented additional exhibits for the Board to review (Exhibits). He presented an e-mail that stated there were no complaints filed on behalf of the Tracy Park Neighbor Association dated February 23, 2010. The front yard has always been on Owasso Avenue.

Applicant Rebuttal

Mr. Callahan asked to talk about definitions in the zoning ordinance. A setback is a not measure of where a fence is but to the face of a building.

Ms. Stead said to Mr. Callahan, it was plainly stated by an attorney who advised the Board at the last hearing that Owasso Avenue was the front yard and that interpretation was not appealed. The Board cannot consider deed restrictions; however, the deed indicates that the east portion of the house is the front yard. This Board determined that Owasso Avenue is the front yard.

Board Action:

On **Motion** of **Stead**, the Board voted 5-0-0 (White, Stead, Tidwell, Van De Wiele, Henke "aye"; no "nays"; no "abstentions"); to **DENY** a Special Exception to modify the height of a fence in the required front yard in the RS-3 district from 4 ft. to 6 ft. (Section 210.B.3). Finding: that it would be injurious to the neighborhood.

LT 11 BLK 6, RIDGEWOOD ADDN OF TRACY PARK ADDN, City of Tulsa, Tulsa County, State of Oklahoma.

Case No. 21031

Action Requested:

Variance of the required side yard in an RE district from 15 ft. to 12 ft. (Section 403) to permit an addition to an existing dwelling.

Presentation:

Roy Johnsen, 1 West 3rd Street, Suite 1010, Tulsa, Oklahoma, appeared on behalf of Scott and Martha Dickman, contract purchasers of the property in question. The property in 1996 was zoned RS-1 and changed to RE; this house was built prior to 1996 the applicable setback required at that time was 10 ft.; in 1996 the side yards became 15 feet the existing house is on the 12 foot line; this property is 1.5 acres it is composed of two lots of record but it has over one track. Noting page 5.6 of the packet Section D444 proposes a 424 sq. ft. addition that will attach to the existing dwelling and is not within the required rear yard. The alignment is on the 12 ft. line and coincides with the house presently existing. However, the Code says 15 ft., which causes the request for variance from 15 ft. to 12 ft.

Interested Parties:

Juan Calderon, 4133 S. Wheeling, Tulsa, Oklahoma, said he owns 2843 S. Peoria, and is concerned that when the fence currently separating his property from the subject property is removed and the driveway is extended into the subject property it will cause a dirt problem for his house. The applicant owns a segment of property extending to S. Peoria Ave. Mr. Calderon has an access easement to use the driveway. His concern is the traffic.

Board Action:

On **Motion of White**, the Board voted 5-0-0 (White, Stead, Tidwell, Van De Wiele, Henke "aye"; no "nays"; no "abstentions"); to **APPROVE** a Variance of the required side yard in an RE district from 15 ft. to 12 ft. (Section 403) to permit an addition to an existing dwelling; finding that the addition is going to be an addition to the existing dwelling and will be no closer to the side yard than the existing dwelling. 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.

A TRACT OF LAND THAT IS PART OF U.S. GOVERNMENT LOT 3 OF SECTION EIGHTEEN (18), TOWNSHIP NINETEEN (19) NORTH, RANGE THIRTEEN (13) EAST OF THE INDIAN BASE AND MERIDIAN, TULSA COUNTY, OKLAHOMA, SAID TRACT OF LAND BEING DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 18; THENCE N 00°04'56" W ALONG THE WESTERLY LINE FOR 1650.00 FEET; THENCE DUE EAST FOR 30.00 FEET TO THE POINT OF BEGINNING OF SAID TRACT OF LAND; THENCE N 00°04'56" W PARALLEL WITH SAID WESTERLY LINE FOR 20.00 FEET; THENCE DUE EAST FOR 135.40 FEET; THENCE N 00°04'56" W PARALLEL WITH THE SAID WESTERLY LINE FOR 15.00 FEET; THENCE DUE EAST FOR 104.60 FEET; THENCE N 00°04'56" W PARALLEL WITH THE SAID WESTERLY LINE FOR 280.00 FEET; THENCE DUE EAST FOR 190.00 FEET; THENCE S 00°04'56" E PARALLEL WITH THE SAID WESTERLY LINE FOR 315.00 FEET; THENCE DUE WEST FOR 430.00 FEET TO THE POINT OF BEGINNING OF SAID TRACT OF LAND.

Case No. 20767-B

Action Requested:

Variance of the parking requirement (Section 1212.D) and an amendment to a previously approved plan; both to permit an outdoor customer seating area in addition to an existing restaurant use in the CH district.

Presentation:

Scott Trizza, 1011 N Cheyenne Ave., Tulsa, Oklahoma, co-owner of the Old School Bagel Café proposed to cover a section on the north side of the building it is paved but never used for parking. He would like to cover it to allow for outdoor seating.

Interested Parties:

Leroy Wellborn, 2232 S. Owasso, Tulsa, Oklahoma, expressed total favor of the project.

Board Action:

On **Motion of White**, the Board voted 5-0-0 (White, Stead, Tidwell, Van De Wiele, Henke "aye"; no "nays"; no "abstentions"); to **APPROVE** a Variance of the parking requirement (Section 1212.D) and an amendment to a previously approved plan; both to permit an outdoor customer seating area in addition to an existing restaurant use in the CH district per plan 6.6. Finding: this addition will not reduce the number of parking spaces in place on the site. 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.

W135 OF S100.5 LT 7 BLK 2, LEE DELL ADDN, City of Tulsa, Tulsa County, State of Oklahoma

BOARD MEMBER COMMENTS

There being no further business, the meeting adjourned at 3:30 p.m.

Date approved: 3/9/10

Frank X. ...
Chair