

CITY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1024
Tuesday, May 11, 2010, 1:00 p.m.
Tulsa City Council Chambers
One Technology Center
175 East 2nd Street

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	OTHERS PRESENT
Henke, Chair Stead, Vice Chair Tidwell, Secretary Van De Wiele White	None	Alberty Cuthbertson Zezulka	Boulden, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Tuesday, May 4, 2010, at 9:43 a.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 April 27, 2010 (No. 1023).

Mr. Henke asked if there were any Requests for Continuance. Mr. Cuthbertson responded that there were no Requests for Continuance. However, there are five applications on the agenda that have been withdrawn; in all five cases, the applicants are requesting a full refund. The applicants were requesting a special exception for mobile food vendors in different parts of the City. The City at first said the mobile food vendors would need to be granted a special exception from the Board of Adjustment. Recently, the City has reevaluated that decision and determined that the City would discontinue to enforce it until the appropriate process has been determined for mobile food vendors. Mr. Henke stated that the Board would address each application in order of the agenda.

NEW APPLICATIONS

Case No.21065

Action Requested:

Variance of the maximum floor area permitted for detached accessory buildings in an RS-3 district from 660.4 sq. ft. to 1,048 sq. ft (Section 402.B.1.d); to permit a slightly larger replacement garage/ workroom, located at 1727 South Gary Avenue.

Presentation:

Lance Woolsey, 1727 South Gary Avenue, Tulsa Oklahoma 74104, the applicant, is requesting the variance in order to permit a slightly larger replacement garage and workroom. The current structure was built in 1925 and has deteriorated. The applicant is asking for 160 square feet more than that of the existing structure. The structure would be used for a garage workspace for the applicant.

Comments and Questions:

Mr. Henke stated that there was an objection from Brad Sanditen; however, that objection has been withdrawn.

Ms. Stead stated that if approved, it would be per plan 2.7. Ms. Stead asked if this is exactly what would be built. Mr. Woolsey responded affirmatively. Ms. Stead stated that the conditions stated in the letter from Windover would be required: no windows would be blocked by the extension of the structure; there would only be a cold-water sink; and there are no provisions made for future conversions.

Interested Parties:

There were no interested parties.

Board Action:

On **MOTION** of **Stead**, the Board voted 5-0-0 (White, Henke, Stead, Tidwell, Van De Wiele "aye"; no "nays"; no "abstentions") to **APPROVE** the Variance of the maximum floor area permitted for detached accessory buildings in an RS-3 district from 660.4 sq. ft. to 1,048 sq. ft (Section 402.B.1.d); to permit a slightly larger replacement garage/ workroom. The Board finds that the 50-foot lot, platted in the 1920s, was before the current Zoning Code was placed in effect, so that this property is non-conforming as to RS-3 zoning. Subject to plan 2.7 and subject to conditions in the Windover letter dated March 24, 2010, the replacement structure would imitate the existing residence in style and scope; no windows will be blocked with the eight-foot extension of the new structure. Other than electricity the only other utility would be a cold-water sink, which currently exists in the existing structure. This approval does not provide for future conversions without returning to this Board. In granting this variance, the Board finds 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 would not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code or the Comprehensive Plan.

LT 11 BLK 4, FLORENCE PARK ADDN, City of Tulsa, Tulsa County, State of Oklahoma.

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Case No. 21067

Action Requested:

A Variance of the front yard requirement from the centerline of an abutting street in the RS-3 district from 50 ft to 40 ft (Section 403) to permit an existing extension to the existing dwelling, located at 1244 North Quebec Avenue.

Presentation:

Paul Smith, 1244 North Quebec Avenue, Tulsa, Oklahoma 74115, the applicant, requested a variance of the front yard to permit an existing extension to the existing dwelling.

Comments and Questions:

Ms. Stead stated that she recalled that this particular street was platted in the 20s or 30s. Mr. Smith responded that the street was an alley in the 50s. Ms. Stead asked how long the gravel drive has been in existence. Mr. Smith responded that he was not sure, but that he purchased the property in 1993.

Ms. Stead stated that she had owned property in the area from the 50s to 60s and knows that there was literally a shack on the property. Therefore, Ms. Stead asked Mr. Boulden what approach should be taken since she is on the Board. Mr. Boulden stated that the Board could take judicial notice of the fact if they so desired.

Mr. Boulden stated that if there should be an issue, Neighborhood Inspections would investigate.

Mr. Van De Wiele asked Mr. Smith if he believed that the driveway had always been gravel. Mr. Smith stated that it had been.

Ms. Stead stated that the street, with what little development that is on it, was established well before 1970.

Mr. Van De Wiele asked how long the new structure had been in place. Mr. Smith responded ten months.

Ms. Stead asked the applicant how old the original structure is. Mr. Smith responded it was fifty years old.

Interested Parties:

There were no interested parties.

Board Action:

On **MOTION** of **Stead**, the Board voted 5-0-0 (White, Henke, Stead, Tidwell, Van De Wiele "aye"; no "nays"; no "abstentions") to **APPROVE** the A Variance of the front yard requirement from the centerline of an abutting street in the RS-3 district from 50 ft. to 40 ft. (Section 403), to permit an existing extension to the existing dwelling. The Board finds that this lot, which was created in an RS-3 district, does not comply with today's RS-3 standards, that, in addition, the topography to the rear of the existing structure, which was built approximately in the 1950s is not conducive on which to build. The gravel driveway has been in existence for many years and therefore, is grandfathered in. Subject to plan 3.6, the Board finds that by reason of extraordinary or exceptional conditions or circumstances which are peculiar to the land and structure 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. It is also noted that this property is located at the end of the block.

LT 12 BLK 1, SECOND WESTROPE ACRES, City of Tulsa, Tulsa County, State of Oklahoma.

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Case No. 21068

Action Requested:

Special Exception to permit a concession trailer (Use Unit 2) in a CS district (Section 701) and a Variance of the maximum 179 days per calendar year a concession trailer may be located on a lot (Section 1202.C.1) located at 215 S. Lewis. **The applicant requests a full refund of \$809; no action was performed on this application.**

Board Action:

On **MOTION** of **White**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") the Board **APPROVED** a full refund of \$809.

LTS 8 THRU 16 LESS BEG NEC LT 8 TH W220 S290.4 E42 TH ON CRV RT TO PT TH N250.4 TH ON CRV RT TO PT TH E178 N12 POB BLK 3 , R T DANIEL ADDN, City of Tulsa, Tulsa County, State of Oklahoma.

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Case No. 21069

Action Requested:

Special Exception to permit a concession trailer (Use Unit 2) in a CS district (Section 701), located south of the southeast corner of East 21st Street and

South 109th East Avenue. The applicant requests a full refund of \$735; no action was performed on this application.

Board Action:

On **MOTION** of **White**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") the Board **APPROVED** a full refund of \$735.

PRT LT 1 BEG 150S NWC LT 1 TH S125 E150 N125 W150POB BLK 1, TIFFANY PARK ADDN, City of Tulsa, Tulsa County, State of Oklahoma.

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Case No. 21070

Action Requested:

Special Exception to permit a concession trailer (Use Unit 2) in a CS district (Section 701); and a Variance of the maximum 179 days per calendar year a concession trailer may be located on a lot (Section 1202.C.1), located at 3111 S. Mingo Road. The applicant requests a full refund of \$776; no action was performed on this application.

Board Action:

On **MOTION** of **White**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") the Board **APPROVED** a full refund of \$776.

LOT-2-BLK-1, THIRTY-FIRST AND MINGO CENTER ADDN, City of Tulsa, Tulsa County, State of Oklahoma.

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Case No. 21071

Action Requested:

Special Exception to permit a concession trailer (Use Unit 2) in a CS district (Section 701); and a Variance of the maximum 179 days per calendar year a concession trailer may be located on a lot (Section 1202.C.1), located at 3924 South Garnett Avenue. The applicant requests a full refund of \$793; no action was performed on this application.

Board Action:

On **MOTION** of **White**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") the Board **APPROVED** a full refund of \$793.

LT 1 BLK 1, PARKLAND CENTER, City of Tulsa, Tulsa County, State of Oklahoma.

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Case No. 21072

Action Requested:

Special Exception to permit a nursing home (Use Unit 2) in the RS-3 district (Section 401), to permit an addition to an existing nursing home, located at the Northwest corner of East 28th Street and South Jamestown Avenue.

Presentation:

Douglas Boyd, 1445 South Newport Avenue, Tulsa, Oklahoma 74120, appeared on behalf of the applicant. The applicant asked for the Special Exception to allow a nursing home in an RS-3 district and a waiver of the screening requirement. The addition would consist of 7,260 square feet. It will contain 12 single bedrooms. The current facility is licensed for 56 beds; but only uses 48 beds. The expansion of the facility would require a lot-combination.

Comments and Questions:

Mr. Henke stated that the applicant mentioned a lot-combination. Mr. Boyd responded that the lot-combination would be for lots 23 and 24.

Ms. Stead stated that the existing facility was approved for lots 19 – 22 and lots 23 and 24 would be approved with the lot-combination.

Ms. Stead asked if the applicant was including the nine parking spaces on the south side of the facility, and if so, would there be a need for a license agreement with the City.

Mr. Cuthbertson stated that per this site plan, it appears that the parking along 28th Street extends into the right-of-way; and if those parking spaces extend into the right-of-way, they cannot legally be counted to satisfy the parking requirement for the facility. The applicant suggested that the parking spaces are not in the right-of-way. At this point, the current parking spaces may be legal but non-conforming. The current parking may have been established prior to the 1970 Zoning Code. However, the expansion would trigger additional required parking. The applicant is planning to add two parking spaces to the west side of the combined property. Ms. Stead stated that those parking spaces were shown originally and they were never built. Ms. Stead stated that all of the parking is north of the sidewalk. Mr. Cuthbertson stated that the sidewalk might indicate the property line.

Mr. Van De Wiele asked if after the expansion there would be 60 beds. Mr. Boyd responded affirmatively.

Ms. Stead asked why this should be approved today when the applicant would have to return for the screening variance. Mr. Boyd responded that the applicant was taking the first step with the approval of the Special Exception.

Mr. Henke asked if the screening variance was advertised. Mr. Cuthbertson stated that the screening variance was not requested.

Mr. Alberty stated that the applicant was correct that the Special Exception for the use is the only request before the Board. However, to meet further zoning requirements the applicant would have to request additional the action.

Interested Parties:

There were no interested parties.

Board Action:

On **MOTION of White**, the Board voted 5-0-0 (White, Henke, Stead, Tidwell, Van De Wiele "aye"; no "nays"; no "abstentions") to **APPROVE** the Special Exception to permit a nursing home (Use Unit 2) in the RS-3 district (Section 401), to permit an addition to an existing nursing home. The Board finds with the following condition that there are sidewalks either built or maintained on 28th Street and Jamestown Avenue. The Board finds that 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.

LT 19 – 22 Blk 9, LT 23 BLK 9, LT 24 BLK 9, KIRKMOORE ADDN, City of Tulsa, Tulsa County, State of Oklahoma.

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Case No. 21073

Action Requested:

Special Exception to permit a concession trailer (Use Unit 2) in a CH district (Section 701); and a Variance of the maximum 179 days per calendar year a concession trailer may be located on a lot (Section 1202.C.1), located at 2415 East 11th Street. **The applicant requests a full refund of \$878.50; no action was performed on this application.**

Board Action:

On **MOTION of White**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") the Board **APPROVED** a full refund of \$878.50.

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Case No. 21074

Action Requested:

Special Exception to modify the setback requirement for a communications tower from an abutting AG zoned property (Section 1204.C.3.g.1), located at the northwest corner of East 36th Street North and North Highway 169.

Presentation:

Troy Williams, 1717 S. Boulder, Tulsa, Oklahoma 74119; on behalf of WRG Holdings LLC the applicant, proposed to build a 120-foot tall communications tower in the southwest corner of the subject property. The property to the west is zoned AG and owned by the City of Tulsa and used by ODOT as a storage facility. The proposed entrance to the property is though the an existing entrance used by Titian Propane, which is paved all the way around the north side and down the west side building with

gravel from that point to the tower. The tower will handle four carriers. Initially it would be ATT Wireless, and they are doing a major expansion due to the need in the area.

Comments and Questions:

Mr. White asked if this would be built per plan submitted. Mr. Williams responded affirmatively.

Interested Parties:

There were no interested parties.

Board Action:

On **MOTION** of **White**, the Board voted 5-0-0 (White, Henke, Stead, Tidwell, Van De Wiele "aye"; no "nays"; no "abstentions") to **APPROVE** the Special Exception to modify the setback requirement for a communications tower from an abutting AG zoned property (Section 1204.C.3.g.1), per plan submitted 10.6. The Board finds that the IL property projects down into an area of AG property; that on the east is highway right-of-way; that on the west is owned by the City of Tulsa and is used for storage of highway construction material for ODOT. The Board finds that this 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.

BLK 1, SUN VILLAGE ADDN, City of Tulsa, Tulsa County, State of Oklahoma.

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Case No. 21075

Action Requested:

A Variance to reduce the minimum livability space from 7000 to 5600 sq. ft. for a lot in an RS-1 district (Section 403), located at 3420 South Birmingham Avenue.

Presentation:

Walter Tempinski, 3220 South Peoria, Tulsa, Oklahoma, the applicant proposed the removal of an existing shed to build a semi-detached two-car garage. The applicant proposed that the location of the garage would preserve the existing trees on the property. The subject property is five feet narrower than the adjacent lots. The subject property does have an existing circular driveway in the front.

Interested Parties:

Pam Iacoe, 2521 East 34th Street, Tulsa, Oklahoma 74105, stated that the neighborhood has had problems with excess water due to the increase building of driveways using the permeable ground. The neighborhood has lost 30 to 40 seventy-five-year-old trees due to water problems. Ms. Iacoe asked for clarification of the term "livability space."

Comments and Questions:

Mr. Cuthbertson stated that livability space is unoccupied portion of a lot not covered by parking area in front or side of a dwelling. In this case, the property contains a large circular driveway in the front yard; that driveway takes from the lot's livability space, as

would the proposed driveway along the side of the dwelling. Any parking area located behind the building, however, does not count against livability space.

Applicant's Rebuttal:

Mr. Tempinski stated that he was made aware that there was a problem with drainage from a letter of deficiency; the applicant is installing a drainage system that would carry water to an existing storm drain, which is located in the backyard. Mr. Tempinski stated that the backyard was pervious ground.

Comments and Questions:

Mr. Boulden asked if that was the drainage plan submitted to Building Services. Mr. Tempinski responded that he had spoken with James Mitchell, the planner who handles stormwater reviews and he has agreed that this is the approach that should be taken. Mr. Boulden stated that Building Services would require a drainage plan for single-family residences.

Mr. Van De Wiele asked what the curved line on the plan represented. Mr. Tempinski responded that it was a paved patio area and that it does not count against the livability space because it is not in a traffic area. Mr. Cuthbertson stated that the area was not a parking area.

Ms. Iacoe stated that the issue is not necessarily the drainage; it is the placing of concrete over permeable ground. Concrete kills the trees.

Mr. Tempinski stated that the plan shows the area around the trees is fenced off so they are not disturbed.

Mr. Van De Wiele asked is there a need for the large circular driveway in front of the property. Mr. Tempinski responded that the house does not have a garage.

Mr. Tidwell asked if an effort was being made to save the trees. Mr. Tempinski responded, affirmatively.

Ms. Stead stated that the subject property contains 13,000 square feet while the RS-1 district requires a minimum lot area of 13, 500 square feet. There is 500 square foot strip of land separated from the subject property.

Mr. Van De Wiele asked if the 500 square feet was part of the livability calculation. Mr. Cuthbertson responded that it was not. Mr. Van De Wiele asked Mr. Tempinski to address the 500 square feet. Mr. Tempinski responded that he was unable to determine why the 500 square feet was not included. Mr. Cuthbertson stated that the Assessor's records state that these 500 square feet have a different owner.

Mr. Henke asked Mr. Tempinski to address the hardship. Mr. Tempinski responded that the lot is smaller than the adjacent lots; and the existing circular drive in the front yard, which has been there for several years from when the house was originally built. Ms.

Stead asked when the house was built. Mr. Tempinski responded it was probably built in the 1950s or early 60s. Ms. Stead stated that it was rezoned from RS-2 to RS-1 after it was built.

Board Action:

On **MOTION** of **Van De Wiele**, the Board voted 5-0-0 (White, Henke, Stead, Tidwell, Van De Wiele "aye"; no "nays"; no "abstentions") to **APPROVE** the Variance to reduce the minimum livability space from 7000 to 5600 sq. ft. for a lot in an RS-1 district (Section 403), to permit an addition to an existing dwelling subject to plan 11.6 submitted. The Board finds that the lot in question is smaller than the average lot in the neighborhood; and that there is a unique situation with the west side of the lot that may mitigate the situation to some degree or another. The Board finds 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.

LOT-3-BLK-3 LESS-W 5', TIMBERLAND ADDN, City of Tulsa, Tulsa County, State of Oklahoma.

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Case No. 21078

Action Requested:

Minor Special Exception to reduce the required front yard in the RS-3 district from 25' to 22.5' (Section 403) to permit an existing dwelling, located at 9913 South 66th Avenue.

Presentation:

Thomas Birmingham, 1141 East 37th Street, Tulsa, Oklahoma, the applicant proposed a Minor Special Exception under the zoning ordinance. The property is located in an existing neighborhood and the house was built in the late 1970s. The applicant plans to sell the property and needs the special exception to do so.

Interested Parties:

There were no interested parties.

Board Action:

On **MOTION** of **White**, the Board voted 5-0-0 (White, Henke, Stead, Tidwell, Van De Wiele "aye"; no "nays"; no "abstentions") to **APPROVE** a Minor Special Exception to reduce the required front yard in the RS-3 district from 25' to 22.5' (Section 403) to permit an existing dwelling. The Board finds that the alignment of the structure extends out 2.5 feet farther than the rest of the houses on the block. In addition, no further alterations shall be made to the front of the structure. The Board finds that this

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.

LT 3 BLK 3, JAMES' PLACE, City of Tulsa, Tulsa County, State of Oklahoma

BOARD MEMBER COMMENTS:

Mr. Boulden introduced Mark Swiney from the Legal Department. Mr. Swiney is cross training with additional exposure to the Planning Commission, Board of Adjustment and Preservation Commission.

There being no further business, the meeting adjourned at 2:12 p.m.

Date approved: 5/25/10

Frank K. H. Jr.
Chair