

CITY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1034
Tuesday, October 12, 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 Tidwell, Secretary White, Vice Chair Van De Wiele		Alberty Sparger	Swiney, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Wednesday, October 6, 2010, at 3:10 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. Alberty read the rules and procedures for the Board of Adjustment Public Hearing.

MINUTES

On **MOTION** of **TIDWELL**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the **Minutes** of September 28, 2010 (No. 1033).

NEW APPLICATIONS

Case No. 21147-Erica Dorwart

Action Requested:

Appeal the determination of an Administrative official in issuing a permit (#233593) for a carport addition and interior remodel.

Presentation:

Erica Dorwart, 2255 South Troost Avenue, Tulsa, OK; she asked for a continuance of the case due to a third set of amended site plans being filed that she has not been able to review.

Interested Parties:

John Moody, Attorney, 6004 South Marion Avenue, Tulsa, OK; he represents the property owners, Bill and Patty Harwell, Mr. Moody objected to the request for continuance for the reason it was not timely made, and in addition, it does not deal with the issues at hand. Mr. Moody stated that Ms. Dorwart has had adequate time to prepare because he does not think the third set of site plans deviate from the second set of site plans that have been previously filed. An additional reason to move forward with the hearing is the dilapidated state of the ceiling and some of the structure in the garage which is the primary reason the remodeling was requested and for which the permit was issued.

Comments and Questions:

The Board asked Mr. Alberty if he, or the staff, has seen the third set of site plans and Mr. Alberty stated they had not seen the site plans and he felt that was irrelevant because what is being appealed is not what has been submitted subsequent to this time; the appeal is based on the issuance of a permit that is all ready in place.

Board Action:

No **MOTION** was made for a **CONTINUATION** on Case No. 21147; therefore, the case will be heard in due course.

CONTINUATIONS

Case No. 21143-Jeremy Perkins

Action Requested:

Variance to permit an eave (roof overhang) to project more than 2 feet into a required yard (Section 210.B.2). **Location:** 1244 East 25th Street South

Mr. Alberty made a correction on the Action Requested phrasing; the phrase "Section 210.B.2" should read as "Section 210.B.1".

Mr. Stuart Van De Wiele recused himself and left the room at 1:09 P.M.

Presentation:

Jeremy Perkins, 1244 East 25th Street, Tulsa, OK; stated the portion of the house to be dealt with today is a 13'-6" x 20'-6" addition being made on the east side of the house, and is currently under construction. A existing carport and driveway were removed to make room for the new additon; the new driveway will go in where the old driveway was and the new room addition will go in where the carport was located creating a porte cochere allowing access to the existing garage. The house is a 1920's prairie box style with deep overhangs and the addition overhang will match the existing overhangs in the front on the side of the house.

Mr. Alberty clarified for the Board that the overhang on the house is not the issue but it is the location of the overhang in the required yard.

Interested Parties:

Steve Peters, Attorney, 1800 South Baltimore, Suite 900, Tulsa, OK; he represents four neighbors who are protesting just the east roof overhang. Mr. Peters stated he did not believe the original house had this large overhang to the east previous to the remodel.

Skeet Walker, 2452 South Owasso Place, Tulsa, OK; he stated he does not oppose the overhang on the front of the house because it would match the overhang that is there, but he does oppose the proposed overhang to the east because it would extend past the allowable distance between houses and it was never there. The proposed overhang is too close to the house on the east.

The Board asked Mr. Perkins how deep the overhang was and he stated it was 48 inches deep.

Russell Murray, 1252 East 25th Street, Tulsa, OK; he stated the overhang is entirely too close to his house, and if the proposed overhang were to be allowed it could be a possible fire hazard.

Rebuttal:

Mr. Perkins stated he wanted to clarify the overhang on the east side of the house. There was a one-story metal carport and the carport did not have an overhang. The porte cochere and the second floor addition has been added to the house and it goes to the allowed five foot setback.

Ms. Stead asked Mr. Perkins when he and the City first noticed the closeness of the overhang. Mr. Perkins stated the City did not notice but he did when the roof deck was placed on the house, that is when he called the City of Tulsa.

Comments and Questions:

None.

Board Action:

On **MOTION** of **STEAD**, the Board voted 4-0-0 (Henke, Stead, Tidwell, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Variance to permit an eave (roof overhang) to project more than 2 feet into the front yard of the property, and the Board voted 4-0-0 (Henke, Stead, Tidwell, White "aya"; no "nays"; no "abstentions") to **DENY** a Variance to permit an eave (roof overhang) to project more than 2 feet in the east or side yard (Section 210.B.1); finding that the front roof overhang is in keeping with the 1920's architecture of the house in front. This is an extraordinary and exceptional circumstance peculiar to this structure; the literal enforcement of the terms of the code would result in unnecessary hardship. That such 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 purpose, spirit or intent of the code or the comprehensive plan; for the following property:

LT 5 BLK 10, SUNSET TERRACE

Mr. Stuart Van De Wiele resumed his position on the Board at 1:43 P.M.

NEW APPLICATIONS

Case No. 21146-Continental 214 Fund, LLC

Action Requested:

Special Exception to permit a multi-family dwelling use (Use Unit 8) in the OL district (Section 601) to permit an adjoining proposed multi-family dwelling development's leasing office/resident clubhouse, outdoor pool area, and mail kiosk and signage. **Location:** Approximately ½ mile East of the NE/c of East 51st Street and South 129th East Avenue

Presentation:

Sara Johnson, Continental 214 Fund, LLC, W134N8675 Executive Parkway, Menomonee Falls, Wisconsin; she stated that a PUD had been filed for and approved by the Planning Commission but in doing so there were a few issues with the flood plain along the eastern and southern boundaries of the site, so the access point on 51st Street has been relocated to avoid any problems. The site plans have been modified to get all the multi-family units within the zoning district that allows multi-family units on the western boundary, thus leaving a small parcel under two acres. This parcel is located there because of the flood plain line located on the southern boundary, and will be used as access off 51st Street into the development and the clubhouse.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **STEAD**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Special Exception to permit a multi-family dwelling use (Use Unit 8) in the OL district (Section 601) to permit an adjoining proposed multi-family dwelling development's leasing office/resident clubhouse, outdoor pool area, and mail kiosk and signage, with the condition that sidewalks be included along any and all public right-of-ways in the development. It is noted there are no multi-family units in the OL portion of this project; this will return for a subdivision plat; per conceptual plan 3.7; 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; for the following property:

A TRACT OF LAND THAT IS PART OF THE SOUTHWEST QUARTER (SW/4) OF SECTION 28, TOWNSHIP 19 NORTH, RANGE 14 EAST OF THE INDIAN BASE AND MERIDIAN, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE U.S. GOVERNMENT SURVEY THEREOF, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF THE SW/4 SECTION 28, THENCE NORTH 88°42'15" EAST ALONG THE SOUTHERLY LINE OF SAID SW/4 FOR A DISTANCE OF 2,383.95 FEET; THENCE NORTH 1°17'45" WEST FOR A DISTANCE OF 80.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 1°17'11" WEST FOR A DISTANCE OF 325.30 FEET; THENCE NORTH 60°25'41" EAST FOR A DISTANCE OF 293.53 FEET TO A POINT ON THE EASTERLY LINE OF SAID SW/4; THENCE SOUTH 1°16'41" EAST ALONG THE EASTERLY LINE OF SAID SW/4 FOR A DISTANCE OF 259.26 FEET; THENCE SOUTH 60°15'17" WEST FOR A DISTANCE OF 57.14 FEET; THENCE SOUTH 45°03'23" WEST FOR A DISTANCE OF 178.91 FEET; THENCE SOUTH 28°44'03" WEST FOR A DISTANCE OF 97.47 FEET TO A POINT OF CURVATURE; THENCE ALONG A 30.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 89°59'55", A CHORD BEARING OF NORTH 46°17'45" WEST, A CHORD LENGTH OF 42.43 FEET, FOR A DISTANCE OF 47.12 ALONG THE ARC TO THE POINT OF BEGINNING. TRACT DESCRIBED HEREON CONTAINS 77,504 SQUARE FEET OR 1.78 ACRES

Case No. 21147-Erica Dorwart

Action Requested:

Appeal the determination of an Administrative official in issuing a permit (#233593) for a carport addition and interior remodel. **Location:** 2249 South Troost Avenue

Mr. David White recused himself and left the room at 1:53 P.M.

Mr. Stuart Van De Wiele disclosed the fact that 6-7 years ago he and Ms. Dorwart had been involved in a minor auto accident in a parking lot of the building they both worked in. Mr. Van De Wiele stated he had also asked Mr. Swiney, Legal Counsel, if there would be a conflict of interest if he sat on the Board for the hearing, and Mr. Swiney stated there would be no conflict. Ms. Dorwart stated she had no objections to Mr. Van De Wiele sitting on the Board for her hearing today.

Presentation:

Erica Dorwart, 2255 South Troost Avenue, Tulsa, OK; she stated she is appealing the Permit #233593 and a supplemented appeal for certain specified decisions in the addendum Permit application #238036 which pertains to the second set of site plans. She is seeking to preserve the openness in the required yards. In this case applicants and developers were encouraged to provide notice to the home owners in the area, and in this case Ms. Dorwart stated she received no notice; only after seeing construction start did she realize that it would be within three feet of her property in the rear yard. She then lodged a complaint with the City and started to work on an appeal. The City issued a stop work order; the City then found violations of the City zoning and building code and requested a set of revised site plans. Ms. Dorwart stated the addition is within three feet of her property boundary. Ms. Dorwart stated she has fenced her yard within her property line and is confirmed by having survey's performed before and after the fence installation. Ms. Dorwart stated the project is not a remodel but new construction because the existing structure was a garage that had a powder room and a basin. The structure is now over 1,000 feet that is actually in the side yard instead of the rear yard. Ms. Dorwart stated the structure is now 2.7 feet from her home.

Ms. Dorwart presented a picture of the fence in her rear yard and Mr. Van De Wiele asked Ms. Dorwart if the picture was showing a gate located within the fence around her yard. Ms. Dorwart stated it was a gate and it was there to give her access to her yard on the north side of the fence for yard maintenance.

Ms. Dorwart stated her first issue is the improper use for an accessory building; the second issue is the existing garage is over 600 square feet so it was already too large to meet the zoning code for the required rear yard, and the carport is an additional 400+ square feet making the building over 20' x 20'.

Ms. Dorwart stated the homeowners possibly caused some of these issues with the construction because when they presented their original site plan to the City it showed the homeowner submitted a plan showing they owned 64.5 feet wide and 130 feet deep. The 2009 mortgage survey, from their deed and from their tax records shows they own

62 feet wide, so when the City received the original plan it represented the lot to be 2.5 feet wider than it is. Ms. Dorwart stated the original plans created some of the issues. They also included ownership of land down to the street which is City land in the 130 square feet. The City requested a second set of site plans from the homeowner and they were submitted. On the second set of site plans there are property measurements that are not accurate because they are measured from fence to fence but they did show the City it was 2.7 feet or less. The City sent the homeowners two letters, one letter was a building review saying it violated the building code and the other letter was a zoning review requesting a site plan indicating the exact setback distances from the new addition to the south and the east property lines; and the setback distance from the south property line to the carport support post. The homeowners failed to appeal the findings of the City. At that point in time everything went into a stay. Ms. Dorwart stated it is her understanding that at that time the homeowners claimed to own more land again instead of changing the structure to comply and submitted a third set of site plans.

Ms. Dorwart stated there are also problems with the uses of the property. The homeowners stated they were doing a 160 sq. ft. remodel but, again, it is not a remodel; there is a bathroom, a basin, and a powder room in the structure. The homeowners have included a full kitchen and a full bath neither of which were previously in the existing structure. Ms. Wallace, the previous homeowner, has signed an affidavit stating there was only a toilet and a basin in the existing structure, and that it was never used as a dwelling so the current homeowner cannot establish that as prior use. Ms. Dorwart stated she is very concerned about the representations made by the homeowners regarding the uses of the property.

Interested Parties:

Jack Page, Director of Development Services, City of Tulsa, 175 East 2nd Street, Tulsa, OK; he stated that staff issues permits based upon information presented to them they do not necessarily require that all site plans be completed by surveyors; site plans are provided and the Department base their decisions based on that information.

Mr. Mike Tidwell had to excuse himself from the meeting; he had received a text regarding a family emergency. Mr. Tidwell left the meeting at 2:17 P.M.

The project was presented as an accessory structure not as a dwelling unit. Staff did see that the site plans had a bathroom and a kitchen area, and it also had a swimming pool next to it so it was assumed by staff at the time that the facility was serving as a cabana to the swimming pool. A use of a facility can be properly permitted then used inappropriately. The City has since then changed policy; anytime staff sees a facility that includes a bathroom and a kitchen there will be serious questions asked about the use of the facility, specifically is it going to be used as a dwelling structure.

Mr. Van De Wiele asked Mr. Page if these questions had been asked in this case and Mr. Page stated that it was not done in this case. The City has a new Zoning Officer and the officer is still in training therefore there are still some issues.

The City was informed of the possible usage of the structure and a stay order was issued because the City did not want the project to proceed without a clear understanding of its use; and the City did not want the applicant to invest further into the building if they were not going to be able to use the facility as they intended. This was done for protection of the neighbor as well as the homeowner so they did not continue to invest if they could not use the structure as they wanted. It was during the stop work order that Ms. Dorwart filed the appeal which then prevented the City from issuing any furtherance of the permit so this project has been on hold for quite some time. The City has asked the applicants to provide information regarding the setbacks, height, and in terms of the usage. The square footage was addressed by the plan reviewer and that is not in question with the City, but Mr. Yuen Ho will answer that when he comes forward to speak. The height issue has been addressed and there is a revised survey from the applicant which shows the average height of the garage is within the allowable 18 foot height.

Mr. Henke asked each the appellant and the applicant if they would like to continue this hearing to a future date because Mr. Tidwell had to leave for an emergency and Mr. White had recused himself thus leaving only three Board members to vote on the issue. The appellant, Ms. Dorwart, stated she would like to continue this hearing to the next Board meeting date reserving the right to supplement her appeal with additional information just recently gained.

Patty Harwell, 2249 South Troost Avenue, Tulsa, OK; she stated that she has done everything possible to get information to the City in a timely fashion, and have hired outside sources to do things such as surveys. Ms. Harwell, the applicant, also stated she would like to continue this hearing to the next Board meeting date.

Comments and Questions:

None.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 3-0-0 (Henke, Stead, Van De Wiele "aye"; no "nays"; no "abstentions") to **CONTINUE** the Appeal the determination of an Administrative official in issuing a permit (#233593) for a carport addition and interior remodel to the Board of Adjustment meeting on October 26, 2010; for the following property:

LT 12 & N 12' LT 13 BK 7, TERWILLEGGER HGTS

Mr. White returned to the meeting at 2:32 P.M.

Case No. 21110-A-Nan Bertone

Action Requested:

Amendment to a previously approved plan to permit a larger detached building to be located in the front yard in an RS-3 district. **Location:** 4243 East 72nd Street South

Presentation:

Nan Bertone, 4243 East 72nd Street South, Tulsa, OK; she stated the reason she is back before the Board is because the contractor built a 17' x 12' detached building instead of a 10' x 12' detached building as she paid for, and she never checked the contractor's measurements.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **STEAD**, the Board voted 4-0-0 (Henke, Stead, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Amendment to a previously approved plan to permit a larger detached building to be located in the front yard in an RS-3 district, this approval is limited to a 12' x 17' building. The Board finds this approval to be consistent with the intent and spirit of the original approval; as noted the exterior shall match the brick veneer which is present on the house; for the following property:

LT 10 LESS N25 FOR RD BLK 1, SOUTHRIDGE ESTATES

Case No. 21102-A-Tulsa Engineering and Planning

Action Requested:

Variance of the maximum amount of required front yard permitted to be covered with an all-weather surface parking area in the RS-3 district from 34% to permit 28 ft. wide driveways in front of three (3) bay garages (Section 1303.D). **Location:** ¼ mile South of the SW/c of East 41st Street and South 177th East Avenue

Presentation:

Tim Terral, Tulsa Engineering and Planning Associates, 6737 East 72nd Street South, Tulsa, OK; he stated he has presented to the Board previously. His option was to go through the PUD process; he went to the TMAPC on October 7th and was approved for

the PUD, and it will be going to the City Council on the 14th. The property is a platted subdivision and he is trying to get the front yard driveway coverage or the hard surface coverage above the 34% mark, to allow 28' wide maximum driveways. The Planning Commission's issue was whether they had the authority to vote on the variance, so what they did was approve the PUD, sent the case back to the Board of Adjustment to approve the variance, and then take the case to the City Council for the final PUD approval.

Ms. Stead stated that in most neighborhoods people can pour concrete to the property line, so they will take a two-bay garage and do away with the grass and if the Board approves this it is stipulated that the drive is being enlarged from 34% but it does not state to what size or percentage. Mr. Terral stated what they were trying to say was a 28' wide drive on a three-car garage only, but he could stipulate a percentage if that is what the Board wanted.

Ms. Stead was concerned about the minimum 4,000 square feet livability space for each lot, and if the Board approves the three-bay garages how much livability space would be left. Mr. Terral stated that even on the pie-shaped lots there would be approximately 4,400 square feet livability space, about 10% above the minimum.

Mr. Henke stated the problem is the Board cannot approve a blanket variance.

Mr. Alberty stated that Pat Boulden is the Legal Representative for the Board of Adjustment and the Planning Commission Council. In the previous meeting Mr. Boulden advised the Board of Adjustment that the Board could not approve the variance as a blanket variance but could approve the variance on a lot by lot basis. Mr. Boulden's advice in the previous meeting was to determine how an approval might be accomplished under the existing structure. The Board recommended that Mr. Terral take the application to the Planning Commission to seek a PUD approval. The Planning Commission had reservations and questions on whether they could grant a variance in a PUD, and they were told no they could not, but they could approve a PUD subject to the Board granting the variance. Mr. Boulden told the Planning Commission that would solve the blanket issue, by sending the applicant back to the Board to grant the variance.

Mr. Henke asked Mr. Swiney if the Board could grant a blanket variance. Mr. Swiney stated that this had been sent to the Planning Commission for the purpose of approving the PUD and then with the intent that the Board of Adjustment would grant the blanket variance, so yes. The PUD process protects the Board and protects all the interested parties, so the Board can deny any future blanket variances thus eliminating a precedent.

Mr. Van De Wiele asked what the Board thought the hardship was for this application. Ms. Stead stated that it was the Code; three-car garages are the new market trend and our Code is not up to date to take care of the needs of Tulsa's citizens.

Mr. Van De Wiele stated that it is easy to pin the problem onto the City Zoning Code, but the problem is there is too much house or too much garage being built on too little land.

Ms. Stead stated that with a PUD the Board does not have a choice; she quoted, "uniform application of a deviation from the Zoning Code over a large area is usually accomplished through the PUD process."

Mr. Swiney stated that he did not have case law to quote to the Board but the fact that this case went through the PUD process and was legislatively determined to be eligible for this action protects the Board.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **STEAD**, the Board voted 4-0-0 (Henke, Stead, Van De Wiele, White, "aye"; no "nays"; no "abstentions") to **APPROVE** the Variance of the maximum amount of required front yard permitted to be covered with an all-weather surface parking area in the RS-3 district from 34% to permit 28 ft. wide driveways in front of three (3) bay garages (Section 1303.D). It is specifically emphasized this approval is limited to those residences containing three-bay garages. It is also specifically emphasized there shall remain a minimum of 4,000 square feet livability space per lot throughout the addition regardless of lot size. It is also noted that in the material submitted this area is now known as Oxford Court. This approval is pending the approval of PUD No. 779. The Board finds that according to the Comprehensive Plan this is an area of stability in an existing neighborhood. The existing platted RS-3 zoning is in accordance with developmental objectives as outlined in the Comprehensive Plan. Today's marketing trend is in favor of three-car garages in the Tulsa region as many new homes and new subdivisions are building them, and some possess wide driveways; the driveways in this case shall be limited to 28 feet in width and pertain to the larger rectangular and the pie shaped lots in the addition. The Board finds there are extraordinary and exceptional conditions and circumstances, namely dealing with the Code of Tulsa, which are peculiar to the land, structure, or building involved; the literal enforcement of the terms of the existing code would result in unnecessary hardship. That such extraordinary and exceptional conditions or circumstances would 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; for the following described property:

BLOCKS 1 – 8, OXFORD COURT

Case No. 21155-Duvall Architects

Action Requested:

Minor Special Exception to permit a 5 ft. reduction of the 35 ft. required front yard in the RS-1 district (Section 403). **Location:** 2983 East 69th Street South

Presentation:

John Duvall, 1850 South Boulder Avenue, Suite 200, Tulsa, OK; he stated he is the architect working on the project, and the reason for requesting a five foot reduction in the front yard is because it is a sweeping curve and there is no real street line. He is also trying to increase the size of the rear yard because there is a slope to the lot and he wants to be able to resolve the water runoff to the adjacent properties.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Stead, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Minor Special Exception to permit a 5 ft. reduction of the 35 ft. required front yard in the RS-1 district (Section 403); 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; subject to conceptual plan 7.5; for the following described property:

LT-5-BLK-2, TIMBERLANE HILLS ADDN RESUB PRT B1 BRANIFF HILLS

OTHER BUSINESS:

None.

NEW BUSINESS:

None.

BOARD MEMBER COMMENTS:

None.

There being no further business, the meeting adjourned at 3:12 p.m.

Date approved: 10/26/10

Frank X. Krueger

Chair