

CITY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1041
Tuesday, February 8, 2011, 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 Tidwell, Secretary Van De Wiele White, Vice Chair	Stead	Alberty Cuthbertson Sparger	Boulden, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Wednesday, January 31, 2011, at 1:39 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 4-0-0 (Henke, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the **Minutes** of January 11, 2011 (No. 1039).

Minutes for January 25, 2011 were not approved. Approval of the January 25, 2011 (No. 1040) minutes will be carried to the next meeting on February 22, 2011.

UNFINISHED BUSINESS

Case No. 21195-Tommy Huddleston

Action Requested:

Special Exception to permit a bar (Use Unit 12a) on a lot within 150 ft. of R zoned land to the east (Section 701); and a Verification of the spacing requirement for a Use Unit 12a - bar use of 50 ft. from an R district, 300 ft. from a public park, school, or church, and 300 ft. from any other Adult Entertainment Establishment (Section 1212a.C.3). **Location:** 4133 South Peoria Avenue East

Presentation:

No presentation was made; applicant requested a continuance to February 22, 2011 in order to enable notice for necessary additional relief.

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, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **CONTINUE** to February 22, 2011 the request for a Special Exception to permit a bar (Use Unit 12a) on a lot within 150 ft. of R zoned land to the east (Section 701); and a Verification of the spacing requirement for a Use Unit 12a - bar use of 50 ft. from an R district, 300 ft. from a public park, school, or church, and 300 ft. from any other Adult Entertainment Establishment (Section 1212a.C.3); for the following property:

LTS 1 & 2 BLK 4, JENNINGS-ROBARDS ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

Case No. 21210-Phil Hernandez

Action Requested:

Verification of the spacing requirement for an Adult Entertainment Establishment (Use Unit 12a - bar use) of 300 ft from a park, school, church and another Adult Entertainment Establishment and 50 ft. from an R district (Section 1212a..C.3.); and a Special Exception to permit an Adult Entertainment Establishment (Use Unit 12a) use on a lot within 150 ft. of R zoned land (Section 701). **Location:** 3500 South Sheridan Road

Presentation:

No presentation was made; applicant requested a continuance to February 22, 2011 in order to enable notice for necessary additional relief.

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, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **CONTINUE** to February 22, 2011 the request for a Verification of the spacing requirement for an Adult Entertainment Establishment (Use Unit 12a - bar use) of 300 ft from a park, school, church and another Adult Entertainment Establishment and 50 ft. from an R district (Section 1212a..C.3.); and a Special Exception to permit an Adult Entertainment Establishment (Use Unit 12a) use on a lot within 150 ft. of R zoned land (Section 701); for the following property:

LT 1 BK 2, WILMOT ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

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Case No. 19775-A-Lou Reynolds

Action Requested:

Special Exception to change a nonconforming use of a building (as to parking) to increase the amount of restaurant floor area previously permitted (Section 1402.F) and a Special Exception to modify the parking requirements to enable a change use on a nonconforming (as to parking) property (Section 1407.C); both to permit additional restaurant floor area in an existing building utilizing an existing parking area. **Location:** 1338 East 15th Street South

Presentation:

Lou Reynolds, 2727 East 21st Street, Tulsa, OK; stated this is a case that was previously before the Board about five years ago, and the case is before the Board again because the applicant would like to expand the restaurant use of the building, which necessitates a request for two Special Exceptions to modify the previously-approved plan. The originally-approved plan showed 59 parking spaces available; however, when the lots were striped, it was found that only 56 could be provided practically. The plan submitted today shows the 56 parking spaces.

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, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Special Exception to change a nonconforming use of a building (as to parking) to increase the amount of restaurant floor area previously permitted (Section 1402.F) and a Special Exception to modify the parking requirements to enable a change of use on a nonconforming (as to parking) property (Section 1407.C); both to permit additional restaurant floor area in an existing building utilizing an existing parking area. The area will be as per the conceptual plan that was submitted today. This will be in compliance with the parking plan submitted today which shows 56 parking places on a restriped configuration from the original layout. This new layout will enable the restaurant to meet the requirements originally dictated in 2004. The restaurant square footage is 7,517 square feet and the additional square footage will be 1,517 square feet maximum. Finding the Special Exceptions 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:

Lots Three (3), Fourteen (14), Fifteen (15) and Sixteen (16), Block Seven (7), ORCUTT ADDITION, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof, together with the East Half (E/2) of vacated South Quaker Avenue adjacent to Lots Fourteen (14), Fifteen (15) and Sixteen (16) and all of the vacated alley between Lots Three (3) and Fourteen (14) and the West Half (W/2) of the vacated alley adjacent to Lots Fifteen (15) and Sixteen (16).

NEW APPLICATIONS

Case No. 21215-Celebrity Attractions

Action Requested:

Variance of the setback requirement for a digital sign from a visible R district (Section 1221.C.2) from 200 ft. **Location:** 7506 East 91st Street South

Presentation:

Larry Peyton, 7506 East 91st Street, Tulsa, OK; stated the company wants a sign that tells a message for an event that is coming to Tulsa. Mr. Peyton submitted a letter from the church which occupies the R district within 200 feet.

Mr. White asked about the nature of the digital sign and the frequency of the copy change.

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, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Variance of the setback requirement for a digital sign from a visible R district (Section 1221.C.2) from 200 feet, finding that the R usage property, which is less than 200 feet, is a church across 91st Street and the sign will be positioned so it is 90 degrees from 91st Street and will be very difficult to see from the church site. The sign display will be in compliance with 1221.G.2 and per plan 6.7. Finding 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; for the following property:

LT 3 BLK 1, SOUTH SPRINGS OFFICE PARK, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

Case No. 21216-Tanner Consulting, LLC

Action Requested:

Variance of the parking requirement (Section 1220.D) to permit an outdoor recreation use. **Location:** SW/c of West 53rd Street and South Union Avenue

Presentation:

Ricky Jones, 5323 South Lewis, Tulsa, OK; stated he represents the owner and developer of the subject 88-acre tract. A PUD has been filed on this property to allow a Use Unit 20 use, and the owner calls it a zipline recreational facility with an outdoor nature learning center associated with it. The PUD has not been heard because of the weather and has been moved to the March 2nd meeting. According to the code a Use Unit 20 use requires one parking space for every 800 square feet site area; for an 80 acre site that calculates to approximately 4,356 parking spaces. When this project was undertaken the owner had a feasibility study performed by a consultant who manufactures these facilities and installs them; they have identified the number of parking spaces required and the number of users attending at any one time. When the application was filed the owner thought there would be approximately 40 spaces needed. The canopy tour will take about 2-1/2 hours to complete, and the consultants thought two groups of eight each could be touring at any one time thus 40 parking spaces would be more than the center would need. With further study the developer thinks an offsite parking facility would be better, so they have set up an offsite office for the public to come to and the staff will drive the tour participants to the subject property.

Therefore, the request that is being presented today is to go from 4,000 plus parking spaces down to zero because there is no need for public parking spaces. The anticipated all-weather surface spaces that will be needed will be for van loading and unloading area. Mr. Jones also stated that the subject property is considered an interim use property. The Use Unit 20 use will only last until the value of the land has developability.

Mr. Henke asked where the emergency vehicles would go to if they were needed. Mr. Jones stated the emergency vehicles would use the van loading and unloading area, plus all health department codes, restroom facility requirements, etc. would be met and will be discussed at the PUD hearing. There is also a proposed ingress and egress area for emergencies on the west end of the subject property.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 4-0-0 (Henke, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Variance of the parking requirement (Section 1220.D) to permit an outdoor recreational canopy tour and outdoor educational facility use, subject to the conceptual site plan submitted today. The Board finds that the proposed use of the 88 acre tract does not require the approximately 4,300 parking spaces that the code would otherwise require. The Board has found that the applicant has stated that they are providing parking at an offsite location and will be transporting the patrons to the recreational canopy tour facility. Finding 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; for the following property:

A TRACT OF LAND THAT IS THE SOUTH HALF OF THE NORTHEAST QUARTER (S/2 NE/4) OF SECTION THIRTY-FOUR (34), TOWNSHIP NINETEEN (19) NORTH, RANGE TWELVE (12) 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: BEGINNING AT A POINT AT THE SOUTHEAST CORNER OF SAID S/2 NE/4; THENCE SOUTH 88°59'34" WEST ALONG THE SOUTHERLY LINE OF SAID S/2 NE/4 AND ALONG THE NORTHERLY LINE OF THE AMENDED PLAT OF WOODVIEW HEIGHTS, AN ADDITION TO THE CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE RECORDED PLAT THEREOF, FOR

2645.40 FEET TO THE SOUTHWEST CORNER OF SAID S/2 NE/4; THENCE NORTH 01°05'13" WEST ALONG THE WESTERLY LINE OF SAID S/2 NE/4 AND ALONG THE EASTERLY LINE OF LOT FIFTEEN (15), BLOCK ONE (1), MOUNTAIN MANOR SECOND, AN ADDITION TO THE CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE RECORDED PLAT THEREOF, FOR 1323.35 FEET TO THE NORTHWEST CORNER OF SAID S/2 NE/4, SAID POINT BEING THE NORTHEAST CORNER OF SAID LOT 1; THENCE NORTH 89°00'23" EAST ALONG THE NORTHERLY LINE OF SAID S/2 NE/4 FOR 2646.01 FEET TO THE NORTHEAST CORNER OF SAID S/2 NE/4; THENCE SOUTH 01°03'39" EAST ALONG THE EASTERLY LINE OF SAID S/2 NE/4 FOR 1322.73 FEET TO THE POINT OF BEGINNING OF SAID TRACT OF, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

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Case No. 21217-Mike Hoey

Action Requested:

Variance of the building setback in the IM district from the centerline of an arterial street (Section 903) from 100 ft. to 77 ft. to permit a building addition. **Location:** 3310 and 3230 Southwest Boulevard

Presentation:

Mike Hoey, 3310 Southwest Boulevard, Tulsa, OK; stated all the properties located to the south of the subject property are closer to the road. The proposed building addition will actually be situated farther away from the street than the existing building.

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, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Variance of the building setback in the IM district from the centerline of an arterial street (Section 903) from 100 ft. to 77 ft. to permit a building addition. The Board finds the hardship for this case is the fact that there are several buildings in the area that are closer to the street than the proposed building, and that the existing structure to which the proposed building will be attached is closer than the proposed addition, subject to per plan 8.6. Finding 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; for the following property:

**LTS 1 THRU 5 LESS E10 THEREOF BLK 3, THE FULLER WALTER ADDN, and
BEG 662.16E & 797.41S NWC NW TH S524.81 TO SL NW NW TH E185.14 TH NE
ALG WLY R/W SAPULPA RD 575 TH W421.52 POB SEC 23 19 12, CITY OF TULSA,
TULSA COUNTY, STATE OF OKLAHOMA**

Case No. 21218-Ironwood Custom Homes

Action Requested:

Minor Special Exception to reduce the required front yard in the RS-1 district (Section 403) from 35 ft. to 30 ft. to permit an addition to an existing dwelling.

Location: 2913 South Quaker Avenue East

Mr. Henke recused himself at 1:45 P.M.

Presentation:

Michelle Owens, 2657 East 177th Street, Mounds, OK; stated she is adding another garage on to the side of home and is requesting a Minor Special Exception for an additional five feet to provide an adequate turning radius in the driveway to be able to enter the proposed garage.

Interested Parties:

Robert Brejcha, 2909 South Quaker Avenue, Tulsa, OK; stated he owns the north adjoining property and is concerned about the requested change to the neighborhood. Every property on the subject street is built 50 feet off the front of the street. In the case report comments the staff stated the code requires a 35 feet front yard, and yet every property in the area is 50 feet off the street. Mr. Brejcha asked for clarification of the 35 feet versus the existing 50 feet frontage.

Mr. Cuthbertson stated the neighborhood was platted and developed in 1930. The neighborhood was platted with a 50-foot front building line. That building line has since expired so the neighborhood 50-foot front building line is not enforceable by the City, and what prevails today is the zoning requirement. This neighborhood is zoned RS-1 and requires a 35-foot front yard requirement. The pattern was established initially by the platted building line but the City must deal with what is currently on the books which is the 35 feet.

Mr. Brejcha asked staff how a building line expires. Mr. Cuthbertson stated essentially it came to a private covenant.

Robert Sartin, Attorney, 110 West 7th Street, Suite 900, Tulsa, OK; asked to address the subject of the private covenant. Mr. Sartin stated that in 1930 the homeowners of the Lorraine Terrace Subdivision formed a restrictive covenant that stated "all development within the subdivision had to be set back 50 feet from the property line". That was a covenant that was to continue a period of 25 years. In 1945, the homeowners of the subdivision met and extended that restricted covenant an additional 35 years. The reason the restrictive covenant was in place is because the homeowners wanted the lots to be developed as estates; they wanted to ensure the development of the homes was in conformity, they created a look and feel of the neighborhood that would not be violated. The covenant was established for a term and extended for an additional term to give the subdivision time to fully develop. Every property was developed and established in the 45-year time span, and every house is set back 50 feet. Even though the covenant has expired, every home complies with the 50-foot setback. In fact, if this Minor Special Exception is granted, this will be the first property that is allowed to encroach outside of the 50 feet.

Judy Emmert, Ironwood Custom Homes, 208 East 5th Avenue, Owasso, OK; stated she is the builder of the new construction of the subject property. Her company's goal is to never hurt the neighborhood; they want to make the home more beautiful. The property line is approximately 18 feet from the curb so the proposed addition will still be back approximately 48 feet from the curb line or about 30 feet from the property line. The proposed addition is approximately 18 feet past the existing garage. The garage is proposed to be a one-story structure; the only two-story structure addition will be on the back of the home.

Comments and Questions:

None.

Board Action:

On **MOTION** of **TIDWELL**, the Board voted 3-0-0 (Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **DENY** the Minor Special Exception to reduce the required front yard in the RS-1 district (Section 403) from 35 ft. to 30 ft. to permit an addition to an existing dwelling. The Board finds that the Minor Special Exception will not be in harmony with the spirit and intent of the Code, and will be injurious to the neighborhood or otherwise detrimental to the public welfare because it exceeds the previous 50 feet original covenant down to the 35 feet; for the following property:

S 60 LT 3 BLK 1, N 26 LT 4 BLK 1, LORRAINE TERRACE AMD, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

Mr. Henke reentered the meeting at 2:05 P.M.

Case No. 20079-A-D-Bat of Tulsa

Action Requested:

Modification of a condition of a previous approval to permit an indoor recreational use in a different tenant space on the subject property. **Location:** 13679 East 61st Street

Presentation:

Mel Bean, 6904 Silver Oak Drive, Tulsa, OK; stated her space is the second tenant space and is 15,000 square feet which is equal to the front space formerly occupied by Pump It Up, which was the subject of the original Variance or Special Exception.

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, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Modification of a condition of a previous approval to permit an indoor recreational use in a different tenant space on the subject property; for the following property:

LT 4 BLK 1, METRO PARK EAST, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

OTHER BUSINESS

NEW BUSINESS:

None.

BOARD MEMBER COMMENTS:

None.

There being no further business, the meeting adjourned at 2:08 p.m.

Date approved: 2/22/11

Chair