

CITY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1051
Tuesday, July 12, 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 Stead Tidwell, Secretary Van De Wiele White, Vice Chair		Alberty Cuthbertson Sparger	Boulden, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Thursday, July 7, 2011, at 9:08 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 4-0-1 (Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; Henke "abstaining") to **APPROVE** the **Minutes** of the June 28, 2011 Board of Adjustment meeting (No. 1050).

UNFINISHED BUSINESS

None.

NEW APPLICATIONS

21290—Janet Dyches

Action Requested:

Special Exception to permit a home occupation (beauty salon) in a RS-2 district (Section 402.B.6). **Location:** 5139 South Marion Avenue East

Presentation:

Janet Dyches, 5139 South Marion Avenue, Tulsa, OK; stated she would like to have a one person beauty salon in her garage. Ms. Dyches stated she has parking for six so there would be no parking on the street.

Interested Parties:

Jack Neal, 5150 South Marion Avenue, Tulsa, OK; stated he does not oppose the beauty salon in the garage but he does not want to have any signs in the area. Mr. Neal also stated that should the business close for any reason he would like to see the property revert to the status of today.

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 home occupation (beauty salon) in a RS-2 district (Section 402.B.6). The hours of operation shall be 7:00 A.M. to 7:00 P.M., Tuesday through Saturday. The owner will be the only employee. There shall be one customer at a time by appointment only with no walk-in services. Parking shall be in the existing driveway. No outside signage and no deliveries will be made to the home. This special exception is made for a period of ten years from today's date. The owner/operator has stated she has read the conditions for a home occupation, Section 404.B, and will comply with the requirements therein. In granting the special exception the Board has found that it will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; for the following property:

LT 2 BLK 1, CRESCENT PARK ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21292—Ashraf Ahmed

Action Requested:

Special Exception to permit Automobile Sales (Use Unit 17) in a CS district (Section 701); a Special Exception to modify the screening requirement from an abutting R district along 77th East Avenue (Section 212.C); and a Variance to permit the display of vehicles offered for sale within 300 ft. of an adjoining R district (Section 1217.C.2). **Location:** 7701 East 21st Street

Presentation:

Ashraf Ahmed, 7701 East 21st Street, Tulsa, OK; stated for the last eight years he has operated a convenience store but since the Quik Trip was built and opened his business has suffered. Now he would like to convert the convenience store to a used auto sales business which will blend in with the surrounding neighborhood businesses.

Interested Parties:

There were no interested parties present.

Comments and Questions:

Mr. Cuthbertson asked the Board to discuss the third request, the variance, because as he reads the code the request is not necessary, but it has been a source of confusion in the permitting process and it would help the permitting process by rendering an opinion. The variance request states “within 300 ft. of an adjoining R district”, and the way Mr. Cuthbertson interprets the code the property is not adjoining because it is separated by a non-arterial street that is partially zoned commercial. Mr. Henke asked Mr. Cuthbertson if he was asking the Board to make the determination that this is not an adjoining R district because of the street. Mr. Cuthbertson stated that it would be helpful for the permitting process.

Mr. Van De Wiele asked Mr. Cuthbertson what the difference is between “adjoining” and “abutting”, because that seems to be the question that is being raised. Mr. Van De Wiele stated there is a definition in the code that says “abutting” means in the context of notice or screening or enclosure, “contiguous or separated only by a non-arterial street” and in all other instances it means contiguous. Mr. Van De Wiele did not know how that was different from adjoining. Mr. Cuthbertson stated that he would use that definition to support his argument. Mr. Henke stated that the property abuts for screening purposes but is not adjoining. Mr. Cuthbertson stated that the variance request is not necessary because it is not adjoining.

Mr. Boulden stated that in the rules of statutory construction, assuming that since two different words had been used in the code, they must have been something different but the Board can interpret it as being the same if they believe that is what was intended. In this case abutting or adjoining means contiguous or touching and from what is presented on the screen, the property is not touching.

Board Action:

On **MOTION** of **WHITE**, 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 Automobile Sales (Use Unit 17) in a CS district (Section 701); a **Special Exception** to modify the screening requirement from an abutting R district along 77th East Avenue (Section 212.C); and a **Variance** to permit the display of vehicles offered for sale within 300 ft. of an adjoining R district (Section 1217.C.2). The Board has found that the hardship for the variance is that the usage of the properties in the immediate area, as described, is not physically in contact with any of the RM zoned property boundaries on the north and the west sides. The screening requirement along 77th East Avenue will be eliminated. Lighting will be down and away from any surrounding properties, and shielded from the apartments on the west side. There will no outside storage of any equipment and/or materials. All vehicles shall be operational. This will be per conceptual site plan on page 3.8. The Board has found for the two special exceptions that they 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. The Board has found for the variance 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; for the following property:

SW SW SE SE LESS E150 & LESS N130 W180 & LESS W30 & S50 FOR STS SEC 11 19 13, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

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21293—Lamar Outdoor Advertising

Action Requested:

Verification of the spacing requirement for an outdoor advertising sign of 1,200 ft. from another outdoor advertising sign on the same side of the highway (Section 1221.F.2); and a Verification of the spacing requirement for a digital outdoor advertising sign of 1,200 ft. from any other digital outdoor advertising sign facing the same traveled way (Section 1221.G.10). **Location:** North of the northeast corner of East 91st Street South and Highway 75

Presentation:

Lorinda Elizondo, Lamar Outdoor Advertising, 7777 East 38th Street, Tulsa, OK; no presentation was made.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **ACCEPT** the Verification of the spacing requirement for an outdoor advertising sign of 1,200 ft. from another outdoor advertising sign on the same side of the highway (Section 1221.F.2); and a Verification of the spacing requirement for a digital outdoor advertising sign of 1,200 ft. from any other digital outdoor advertising sign facing the same traveled way (Section 1221.G.10); based upon the facts in this matter as they presently exist, subject to the action of the Board being void should another outdoor advertising sign be constructed prior to this sign; for the following property:

**SW SW LYING E OF HWY 75 ROW LESS S24.75 THEREOF FOR RD SEC 14 18 12,
CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

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21303—Keith & Todd Kinslow

Action Requested:

Minor Special Exception to amend a previously approved site plan for a church/school use in the RS-3 district to permit canopy additions over existing walkways.

Location: 1347 East 49th Place

Presentation:

Matt King, 4332 South Birmingham Avenue, Tulsa, OK; stated he is before the Board on behalf of the Catholic Diocese of Tulsa and St. Mary's school/church.

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** a Minor Special Exception to amend a previously approved site plan for a church/school use in the RS-3 district to permit canopy additions over existing walkways. These are shown and subject to the conceptual plan on page 5.6. The Board has found that this minor special exception is compatible with the spirit and intent of the original approvals made by the Board. These 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:

BEG N.L. SW SW 495 E. OF S. PEORIA AVE. TH E. 490 S. 443.88 W. 490 N. 433.88
TO BEG SEC 30-19-13, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

OTHER BUSINESS

None.

NEW BUSINESS:

None.

BOARD MEMBER COMMENTS:

None.

There being no further business, the meeting adjourned at 1:44 p.m.

Date approved: _____

7/26/11

Handwritten signature in blue ink, appearing to read "Frank K. ...".

Chair