

CITY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 902
Tuesday, January 11, 2005, 1:00 p.m.
Francis F. Campbell City Council Room
Plaza Level of City Hall
Tulsa Civic Center

**MEMBERS
PRESENT**

Dunham, Vice Chair
Paddock
Stephens
White, Chair

**MEMBERS
ABSENT**

**STAFF
PRESENT**

Alberty
Butler
Cuthbertson

**OTHERS
PRESENT**

Boulden, Legal
Ackermann, Legal

The notice and agenda of said meeting was posted in the City Clerk's office, City Hall, on Friday, January 7, 2005, at 1:49 p.m., as well as at the Office of INCOG, 201 W. 5th St., Suite 600.

After declaring a quorum present, Chair, called the meeting to order at 1:00 p.m.

Duane Cuthbertson read the rules and procedures for the Board of Adjustment Public Hearing.

REQUEST TO CONTINUE AND CASES TO WITHDRAW

Case No. 19874

Action Requested:

Melinda Martin stated she represented the appellant, Garbe's. They requested a continuance. They circulated a settlement agreement. She stated there was one more issue regarding an odor and burning and they instigated some remediation and it appears to be resolved. They do, however, wish to complete the settlement agreement.

Gerald Jackson, 321 South Boston, Suite 500, stated he represented Tulsa Lithograph.

Ms. Martin also asked for an amendment to the November 23, 2005 Board of Adjustment minutes to show that Mr. Jim Lieber represented Garbe Industries, Inc. rather than Consolidated Printing Solutions.

Board Action:

On **Motion** of **Dunham**, the Board voted 4-0-0 (White, Dunham, Stephens, Paddock "aye"; no "nays"; no "abstentions"; no "absences") to CONTINUE Case No. 19874 to the meeting on January 25, 2005, on the following described property:

LTS 13 & 14 BLK 8, KATY FREEWAY INDUSTRIAL PARK ADDN

* * * * *

Case No. 19967

Action Requested:

Verification of spacing requirement for Use Unit 1212a.C.2, SECTION 705.B. LOCATION OF SEXUALLY-ORIENTED BUSINESSES, 5390 South 129th Street East.

Presentation:

Mr. White stated the notice was sent to property owners in a 300' radius rather than 1,000' radius. Therefore, it needs to be continued to the January 25, 2005 meeting. He asked if this would be a problem for any interested parties.

Paul Wilson, 5703 East 104th Street, with 21st Properties, asked if two weeks is long enough to send out notices. Mr. Cuthbertson replied they only need to mail letters to property owners within 1,000' as a ten-day notice and this is enough time.

Bob Howell, stated his attorney is Jeffrey Levinson, and he understood that the notices went out to the property owners within 1,000'. Mr. Cuthbertson responded that the applicant did their part but staff only sent notices within 300'. Mr. Howell stated there was a contingency in the contract for a January 23, 2005 expiration date. He asked to resolve this matter prior to that date. Mr. Dunham informed him the soonest the Board can hear it is January 25, 2005.

Board Action:

On **Motion** of **Dunham**, the Board voted 4-0-0 (White, Dunham, Stephens, Paddock "aye"; no "nays"; no "abstentions"; no "absences") to **CONTINUE** Case No. 19967 to the meeting on January 25, 2005, regarding the following described property:

PRT LT 2 BEG 354.81S NEC TH CRV RT 50.54 W85 S161.35 E135 N155.19
POB LESS BEG 354.81S NEC TH S155.19 W10 N155.44 E10 POB FOR ST
BLK 4, METRO PARK, PENSKE AT METRO PARK RESUB PRT L2 B4 METRO
PARK, City of Tulsa, Tulsa County, State of Oklahoma

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Case No. 19969

Action Requested:

Variance of lot width from 200 ft to 194 ft; Variance of lot area from 2 acres to 1 acres; Variance of land area per dwelling unit from 2.2 to 1 acre -- SECTION 303. BULK AND AREA REQUIREMENTS IN THE AGRICULTURE DISTRICT and a Variance of street frontage on a public street or dedicated right-of-way from 30 ft to 0 ft -- SECTION 206. STREET FRONTAGE REQUIRED, located: 10901 South Louisville Avenue East.

Presentation:

Mr. White announced Case No. 19969 was withdrawn, on following described property:

NW/C N/2 SE/4 SW/4 TH S 00°11'37" W ALONG WESTLY LN THEREOF DIST 310.23 FT TH S 89°53'25" E DIST 1027.60 FT TO POB TH N 00°06'35" E DIST 224.54 FT TH S 89°53'25" E DIST 194.00 FT TH S 00°06'55" W DIST 224.54 FT TH N 89°53'25" W DIST 194.00 FT TO POB SEC 28 18 13, Unplatted, City of Tulsa, Tulsa County, State of Oklahoma

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MINUTES

On **Motion** of **Dunham**, the Board voted 4-0-0 (White, Dunham, Stephens, Paddock "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** the Minutes of December 14, 2005.

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UNFINISHED BUSINESS

Case No. 19955

Action Requested:

Special Exception to permit church and accessory uses in an RS-4 district -- SECTION 401 -- Use Unit 5; Special Exception to permit church parking on a lot other than the lot containing the principle use -- SECTION 1301.D -- Use Unit 5; Variance to permit accessory parking in the required front yard -- SECTION 1205.B.1.b -- Use Unit 5

Presentation:

Richard E. Walker, 2235 North Norfolk, stated he is the pastor of Pilgrim Rest Baptist Church. He informed the Board their building is 60' x 96' and according to the code they need additional parking. He stated the church owns Lots 6, 7, 8, 11, and 12, which they are including to comply with parking requirements.

Interested Parties:

Esther Ogens, 2202 North Owasso, stated she is Co-Chair of the Lacy Park Taskforce. She remembered Mr. Walker sought more parking spaces in about 1999. She informed the Board that property owners are making improvements and new homes are being constructed. They were opposed to increasing the number and size of churches in this neighborhood.

Alma Lee Floyd, 1034 East Young Place, stated this would be next to Lacy Park and found it to be a good location. He considered the church to be a good neighbor. Mr. Floyd informed the Board there are 30 to 40 empty homes for sale and over 100 vacant lots in the neighborhood. He indicated this application would be good for the neighborhood.

Applicant's Rebuttal:

Rev. Walker asked the Board to allow Lots 11, 12, 6, 7, and 8 as part of the expansion of the church. The church has existed for 30 years and the property has been improved significantly over that period of time.

Comments and Questions:

Mr. Paddock asked if they needed Lots 11, 12, 6, 7, and 8 or just Lots 11 and 12 for parking. Mr. Cuthbertson replied they do not know yet because they do not have the dimensions for the sanctuary. Rev. Walker stated the existing building would become the education hall and the new structure would be the sanctuary. Mr. White asked if they had lighting plans for the property. Rev. Walker replied that they do. Mr. White asked if a lighting plan should be required. Mr. Alberty stated a lighting plan is not a requirement but the Board has the prerogative to require one. He added that the typical standard is to avoid spill-over lighting onto adjacent properties. Mr. Stevens asked if they would be willing to have a tie agreement for all of the lots. Rev. Walker hesitated to have a tie agreement for Lots 6 and 7. Mr. Paddock commented that now that they know the size of the sanctuary he wanted to address the need for 100 parking spaces. He noted there would only be 37 new spaces. Mr. Boulden asked if the front yard on Lot 12 is on Young or Norfolk. Rev. Walker replied that according to the address it would be on Norfolk. Mr. Paddock asked if the owners of Lots 9 and 10 were present, to which Rev. Walker responded they were not present. He added that they have had positive communication with them. The church is trying to purchase Lot 9 since it has been condemned so that it won't create a nuisance for the neighborhood. Mr. Dunham commented that a screening fence would be required to the residential property. Mr. Boulden noted the provision of the parking code, SECTION 1303.C states that lighting used to illuminate an off-street parking area shall be so arranged so as to shield and direct the light away from the properties within an R district, which do not contain the use for which the parking is being provided.

Board Action:

On **Motion** of **Dunham**, the Board voted 4-0-0 (White, Dunham, Stephens, Paddock "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a

Interested Parties:

David Gurthet, 111 South Greenwood, stated he is a Neighborhood Inspections Supervisor. He stated he received a complaint in October 2004 of a large motor home and farm equipment in the yard. The motor home was removed. He submitted photographs (Exhibit C-1). He noted the tractor appeared to be parked on an all-weather surface (the patio) in the rear yard. Mr. Gurthet noted a Board case from 1992, which was similar. He considers this application to fall under Use Unit 23, not permitted in an R-zoned district.

Mr. White out at 2:16 p.m.

Mr. Gurthet stated a separate Board Case 16003 in 1992 was approved deciding that antique farm items were permitted obstructions as displayed. He submitted photographs (Exhibit C-2) of this case. He stated the biggest difference in the current application is that the items are not antiques.

Mr. White returned at 2:18 p.m.

Mr. Gurthet indicated that this is not a permitted use in a R district; and not permitted obstruction to yards.

Katherine Sebert, 1510 South 26th East Avenue, read a letter (Exhibit C-3) from the neighbors in opposition. At the October 2004 neighborhood association meeting they discussed the issue. They listed multiple reasons the applicant has given over the years to keep the equipment or delay action in opposition to the equipment in his yard. They asked that the applicant be compelled to comply with the zoning code and remove the items from his back yard or store in a legally approved building.

Arthur Barber, 1748 South 75th West Avenue, stated he lives directly south of the subject property. He has discussed this issue with Mr. Clark numerous times. He was opposed for reasons stated previously.

Other interested parties signed in as opposed to the application.

Applicant's Rebuttal:

Mr. Clark stated he would not mind building a storage building, but he would not want to have complaints in the future about the building. He stated he would look into arranging for a storage building. Mr. White informed him that the code allows him to have a 500 sq. ft. accessory building. Mr. Dunham added that there could be a restriction in the neighborhood covenants.

A petition was signed at this hearing (C-4).

Case No. 19964

Action Requested:

Variance of the distance required for an Adult Entertainment Establishment from any other Adult Entertainment Establishment from 300 ft to 210 ft, Section 1212a.C.3.c and a Special Exception to meet parking requirements on another lot other than where the principle use is located, Section 1301.E and a Variance of the required number of parking spaces for a U.U.12a from 76 to 58, Section 1212a.D, 1643 South Boulder Avenue West.

Presentation:

Joshua Gifford, 1643 South Boulder Avenue West, stated this would be an adult entertainment establishment, serving beer, alcohol and wine with food service. They do not expect a 50% food mix. There will be no sexually oriented business on the property. They have talked with some of the business owners and residents in the area. They have a vested interest in the community and plan on longevity in this location. They proposed to revitalize the historic Musicians' Theater and bring back live professional musicians. They have recovered this property from the homeless who have used it for the last four years. The lower floor would be for the bar and grill with a fenced-in patio and landscaping. They plan to employ a cleaning service for the property, including the parking lot.

Comments and Questions:

Mr. Paddock asked if this would also be a dance bar. Mr. Gifford replied that future plans include that when they open the top level. He added that until then the top level would be for storage.

Interested Parties:

William B. Jones, 15 East 5th Street, stated he represented Veteran Properties, which owns the Mapco Building to the south. They also own the lot on northwest corner of 17th and Main; two lots between 16th and 17th on the east of Main; approximately five lots on South Main; three lots at the southwest corner of 17th and Cheyenne; and a lot on northwest corner of 18th and Boulder. They anticipated future tenant and parking needs and possible expansion of the facilities. He stated they noticed the remodeling for the last four to five months. It was previously a nursery/day care. They had considered the property as possible parking facilities. When they discussed it with the previous owner the environmental report identified numerous environmental problems, i.e., mold, asbestos, lead paint, etc. Mr. Jones indicated the applicant had time to address these needs but made improvements first and now ask for relief. He noted the other bar has existed there for many years. He complained that the applicant had an open house in December and there was a lot of on-street parking, trash and beer containers littered the subject property and surrounding properties. He added that they received complaints that the music could be heard from offices in their hi-rise to the south. He estimated they would need 120 parking spaces if they use the upper level for office, and yet they are only asking for 58 spaces at this time. He does not believe there is enough parking spaces available. His company does

not want their parking spaces that they planned ahead for their tenants and expansion purposes. He stated he did not hear a hardship and determined it is a self-imposed and economic hardship. He informed the Board that no one contacted his company regarding this application.

Jim Brackett, 1431 South Elwood, stated he has been a property owner in the area for over thirty years. He stated opposition for the above reasons and a few more. He considered the application to be an incompatible use for the area. He complained that he has had to deal with the problems caused by the bar at 17th and Main. He believes there are too many social ills that go along with this type of business. He was not contacted by the applicant. He could not see a hardship. The area has recovered and businesses are doing well there and new residential is going in to the east of the subject property. He questioned that the Salvation Army is supportive of a business selling alcohol. Mr. Brackett stated there are good reasons for the spacing requirements.

David Cameron, 502 West 6th Street, stated he is a partner in the Riggs, Abbey Law Firm, and he was representing them. They own property directly to the west of the subject property. They are opposed as they would not want their parking lot to be used for the overflow parking of this business. He suggested that the proposed patio area could improve it for parking and come closer to meeting the code requirements.

Applicant's Rebuttal:

Mr. Gifford reminded the Board of the historical value of this building. It was built by Oral Roberts in 1947. The hours of operation from 4:00 p.m. to 2:00 a.m. should not interfere affect the surrounding businesses. They would be open to a time restriction on the parking variance rather than spend time acquiring more lots.

Comments and Questions:

Mr. Dunham asked for a hardship. Mr. Gifford replied that they could not move the building to meet the 300' requirement. Mr. Dunham asked if that condition was not there when they bought the building. Mr. Gifford replied that it was but their intention for opening an adult entertainment establishment creates the hardship. Mr. Stevens stated that is more self-imposed.

Mr. Paddock commented that he has personally dealt with some of these concerns in the Brookside area. He has found that the trash problem with one bar in particular has been successfully resolved. The applicant stated they would have a cleaning service so this should not be a problem. He questioned a noise issue from a high-rise building. He could understand the parking being an issue. Mr. White commented the problem could be with subsequent owners. Mr. Paddock noted that no one protested this case from the residential area, where there is a very active neighborhood association. Mr. White pointed out the residential neighbors were not within the 300' radius to receive notices. Mr. Stevens commented that the applicant should have contacted adjacent property owners to

Mr. White abstained from Case No. 19968.

Presentation:

Steve Schuller, 100 West 5th Street, Suite 500, stated the property is in the Woody Crest Subdivision, platted in 1928. There have been almost innumerable lot-splits since then. His clients propose to split the property into two lots, each to meet the Bulk and Area Requirements of the zoning code, as to lot area and land area, with the exception of the lot width. One lot would be one-third acre and the other would be .35 of an acre. They would be larger than the minimum lot size in this zoning district. There are several lots in this neighborhood where the average lot width is less than 100' requirement of the zoning code. He pointed out some of those lots, of which some did not come before the Board and others did. He referred to a letter of opposition sent to the Board by the owner, Chip Doudican, of separate lots that were created by multiple lot-splits. He stated the unnecessary hardship was derived from the odd shape of the lot, uneven topography, and a peculiar location within a unique subdivision of large lots where almost all of them have been subdivided several times. He provided a marked case map (Exhibit G-1) to the Board.

Interested Parties:

Chip Doudican, 2635 South Birmingham Place, stated he was concerned about the applicant's reference to a trend to build large on a small lot. He bought two lots because of the trend to expand the lots. He is opposed to the application and believes the lots should be expanded.

Chuck Blue, 2610 East 26th Place, stated he has lived there for twenty years. They have not known of a lot in the RS-1 area that has been split in that time period. They are creating larger lots as opposed to separating them. He pointed out, besides the Doudican property, another owner in the RS-2 that joined two lots together.

Larry Lebold, 2616 East 26th Place, stated he and his family love their big lot. He expressed concern that the subject house is 90 plus feet from his back property line. A lot-split with two narrow houses would place the side lot of one lot would be about ten feet from his back lot line. This would significantly diminish their enjoyment of their back yard. He added that for years the topography has dropped sharply from the north to the south. His property drops off about six feet from the street to the back property line as the subject property drops another six to seven feet, draining directly into Crow Creek. On the subject property there is a city stormwater sized drain to carry the run-off. He is very concerned and opposed to this application.

Jyo Umezawa, 2636 South Columbia Place, stated his opposition to the application. His main concerns are the drainage and the proximity of another house to his house. He informed the Board that he sacrificed some of his property

at 2640 to put in a greenbelt, which is the trend for more land with the homes in this neighborhood.

One signature in opposition was provided at the meeting (Exhibit G-2).

Applicant's Rebuttal:

Mr. Schuller stated both lots would be the same size as the minimum required lot size. There is no request for a minimum average lot width of 68 ft. The city regulates the stormwater drainage, and they would have to comply because there can be no adverse affect on a neighboring property.

The Board took a brief recess at 3:53 p.m. and the meeting resumed at approximately 3:54 p.m.

Comments and Questions:

Mr. Dunham asked about the staff comment that there were no relevant actions. Mr. Alberty stated the research did not disclose any records of relevant actions. There are no other lots with less than 100' widths was referring to the immediate area, not blocks away. Mr. Paddock noted the striking difference in the size of lots in RS-1 and RS-2.

Board Action:

On **Motion of Dunham**, the Board voted 3-0-1 (Dunham, Stephens, Paddock "aye"; no "nays"; White "abstained"; no "absences") to **DENY** a **Variance** of the required lot width from 100 ft to 75 ft in an RS-1 district for a lot split, for lack of a hardship, on the following described property:

PT LT 1 BG 100' N SEC TH SW 100' W 105. 17' N 180' E 142.09' TO E LINE SLY 143. 6' TO BEG BLK 4, WOODY-CREST SUB, City of Tulsa, Tulsa County, State of Oklahoma

On **Motion of Paddock**, the Board voted 3-0-1 (Dunham, Stephens, Paddock "aye"; no "nays"; White "abstained"; no "absences") to **APPROVE** a **refund** of the fees for names of \$55.00 as recommended by staff.

Case No. 19970

Action Requested:

Variance of required rear yard setback from 25 feet to 12 feet 3 inches; Variance of side yard requirement from 15 feet to 5 feet to permit an addition in an RE zoned district -- SECTION 403.A. -- Use Unit 6, located: 2807 South Peoria Avenue East.

Presentation:

John Walton, 1546 Swan Drive, stated he is the architect for this project. The original garage was converted to a cabana for the pool. The house faces Peoria but is orientated to the south. They proposed to attach a new garage to the

livability requirement for each lot of 5,000 sq. ft. The hardship is Lot 6, a legal non-conforming lot, but to split Lot 5 and tie it to Lot 6 requires the need for relief. The plat was ahead of the more recent zoning, thus requiring the variances.

Interested Parties:

Jack MacCalmon, 2103 East 23rd, stated he was concerned for the stormwater drainage. He doubted that causing an overcrowding of homes would increase the property value. He was opposed to the application.

Cindy Minor, 2116 East 22nd Place, stated this is a historic neighborhood. They appreciate the space and park-like setting, and the gardens that Mrs. Harrington established. She expressed concern for increased traffic, loss of trees, and stormwater drainage. She was opposed to the application.

Comments and Questions:

Mr. White asked staff about the drainage concerns. Mr. Alberty stated that since this was not a re-plat, Stormwater Management does not have a say in it. It would be up to the owner to comply with proper drainage so he does not inflict any adverse condition on an adjoining lot. Mr. White commented the applicant could build on Lot 6 without any relief or tear down the existing house and build three more.

Valerie Geller, 2135 East 23rd Street, stated they are moving into the house to the south of the subject property. They have the second oldest oak tree in Oklahoma and they are concerned about the affect of the drainage on their property. She commented that adding new homes to such a classic neighborhood detracts from the desirability.

Dr. Stewart White, 2145 East 22nd Place, was opposed to detracting from beauty and value of the properties by building a new house at this proximity.

Brandon Jackson, 2222 East 22nd Place, stated he remodeled and restored his home. He could not see a hardship and considered it to be an economic motivation. He stated his opposition.

Ellen Edwards, 2115 East 23rd Street, stated she was speaking also for Rick Stutsman, 2125 East 22nd Street, as he was present earlier and had to leave. They were opposed to the application for reasons previously stated. They did not consider the plans to be in character with the neighborhood.

Rod Nordstrom, 2135 East 25th Street, was opposed for the above reasons.

Applicant's Rebuttal:

Mr. Ledford stated the drainage would be processed through the Stormwater Management Department. He commented that these are residential collector streets, with 50' right-of-way, and 26' of paving. The streets are not substandard

and have curb and gutters. He feels that this design would be more in keeping with the neighborhood than if the lot was developed as is, with the 50' frontage and a front loaded garage. This one is designed to show more of the front of the house with a detached garage to the rear of the property like most of the properties on 22nd and 23rd Streets and in the Brentwood Subdivision.

Comments and Questions:

Mr. White expressed feelings in agreement with the neighbors but noted they have to make decisions in compliance with the zoning code. He felt sure if they denied a variance of front yard setback, when the existing house has less than a 25' setback, that it would be overturned in court on appeal. The variance of the average lot width means only two houses could be built rather than one on each of the three lots, which could be done without coming to the Board. Mr. Paddock considered the hardship for the variance of the average lot width to be an economic hardship and could not support it. He added that the existing house is a historic home.

Interested Parties were allowed to speak again.

Brandon Jackson, stated it was unlikely someone would build there because the property value would not substantiate that type of house on a 50' lot. It appears the hardship is economic.

Jack MacCalmon, asked the Board not to make a decision based on what could happen. He has seen old neighborhoods cut up like this in Dallas and it ruined property value.

Steve Edwards, 2115 East 23rd, stated he and his neighbors have to fight to protect their neighborhood. He has seen this happen in Dallas and Houston and destroyed the quality of life.

Dr. Stewart White, felt this would be a detriment to the neighborhood over a period of time.

Board Action:

On **Motion** of **Paddock**, the Board voted 4-0-0 (White, Dunham, Stephens, Paddock "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a **Variance** of front yard setback from required 30 feet to 25 feet, finding it will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; and to **DENY** a **Variance** of average lot width from 75 feet to 66.80 feet in an RS-2 district to permit a lot-split, for lack of a hardship, on the following described property:

LTS 5 & 6 BLK 7, BRENTWOOD HGTS, City of Tulsa, Tulsa County, State of Oklahoma

OTHER BUSINESS

Case No. 19973

Action Requested:

Request for refund.

Presentation:

Mr. Cuthbertson informed the Board the applicant requested a variance for a sign display area. Staff later discovered the relief was not needed; and recommend a full refund of \$580.00.

Board Action:

On **Motion** of **Dunham**, the Board voted 4-0-0 (White, Dunham, Stephens, Paddock "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a **Refund** of \$580.00, per staff recommendation.

There being no further business, the meeting was adjourned at 5:05 p.m.

Date approved:_____

Chair