

CITY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 903
Tuesday, January 25, 2005, 1:00 p.m.
Francis F. Campbell City Council Room
Plaza Level of City Hall
Tulsa Civic Center

**MEMBERS
PRESENT**

Dunham, Chair
Henke
Paddock
Stead
Stephens

**MEMBERS
ABSENT**

**STAFF
PRESENT**

Alberty
Butler
Cuthbertson

**OTHERS
PRESENT**

Ackermann, Legal
Boulden, Legal

The notice and agenda of said meeting was posted in the City Clerk's office, City Hall, on Friday, January 21, 2005, at 2:44 p.m., as well as at the Office of INCOG, 201 W. 5th St., Suite 600.

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

Mr. 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:

Appeal from the determination that the operations on the subject property do not violate the light industrial classification. Appellant contends there are environmental influences from emission of odors from the operation of a blast furnace on the subject property, 4133 South 72nd Avenue East.

Presentation:

Mr. Cuthbertson informed the Board that the applicant, Andrew S. Hartman requested to withdraw.

Board Action:

No Board action was required, regarding the following described property:

LTS 13 & 14 BLK 8, KATY FREEWAY INDUSTRIAL PARK ADDN, City of Tulsa,
Tulsa County, State of Oklahoma

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Case No. 19978

Action Requested:

Verification of spacing requirement for Use Unit 1212.a from another U.U.1212a use, Northwest Corner of East 58th Street & South Garnett.

Presentation:

Mr. Cuthbertson informed the Board that the applicant, John Moody, requested to be continued to February 8, 2005.

Interested Parties:

Steve Schuller, 100 West 5th Street, Suite 500, stated he represented a neighboring property owner in opposition to the application. They were in agreement to the request for continuance.

Board Action:

On **Motion** of **Paddock**, the Board voted 5-0-0 (Dunham, Stephens, Paddock, Stead, Henke "aye"; no "nays"; no "abstentions"; no "absences") to **CONTINUE** Case No. 19978 to the meeting on February 8, 2005, regarding the following described property:

E200 S300.49 LT 1 BLK 1, GARNETT PLACE, City of Tulsa, Tulsa County, State of Oklahoma

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MINUTES

On **MOTION** of **Paddock**, the Board voted 3-0-0 (Dunham, Paddock, Stephens "aye"; no "nays"; Stead, Henke "abstained"; no "absences") to **APPROVE** the Minutes of November 23, 2004 (No. 900) as amended.

On **MOTION** of **Paddock**, the Board voted 3-0-0 (Dunham, Paddock, Stephens "aye"; no "nays"; Stead, Henke "abstained"; no "absences") to **APPROVE** the Minutes of December 14, 2004 (No. 901) as amended.

On **MOTION** of **Paddock**, the Board voted 3-0-0 (Dunham, Paddock, Stephens "aye"; no "nays"; Stead, Henke "abstained"; no "absences") to **APPROVE** the Minutes of January 11, 2005 (No. 902).

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UNFINISHED BUSINESS

Case No. 19929

Action Requested:

Special Exception to permit off-street parking in an RM-2 District -- Section 401-- Use Unit 10; Variance of required 25 foot rear building setback to 5 feet to permit a parking garage in an RM-2 district -- Section 404.F.4 -- Use Unit 10, 252 West 15th Street South.

Mr. Henke abstained from Case No. 19929.

Presentation:

C. R. Hjelm, 1503 South Denver, withdrew his request for a variance of the rear building setback for a garage. He decided not to build a garage. He stated he would agree to a tie agreement of all three lots. Mr. Hjelm submitted photographs (Exhibit A-1).

Interested Parties:

Lucky Lamons, 205 West 17th Street, stated he represented Riverview Homeowners Association. He thanked the Board for working with the homeowners' association in allowing the continuances. They have met twice with the applicant and they are now in support of the application. They asked that the applicant meet the code with regard to stormwater drainage.

Comments and Questions:

Mr. Stephens asked if the issue of inoperable vehicles on the lot has been resolved. Mr. Hjelm replied that the two vehicles previously on the lot were removed. He will not store any other inoperable vehicles on the lot. Ms. Stead asked if he intends to have parking only on the asphalt that exists, to which he replied affirmatively.

Board Action:

On **Motion** of **Paddock**, the Board voted 4-0-1 (Dunham, Paddock, Stephens, Stead "aye"; no "nays"; Henke "abstained"; no "absences") to **APPROVE** a **Special Exception** to permit off-street parking in an RM-2 District -- Section 401-- Use Unit 10, subject to a tie agreement; and no storage of inoperable vehicles, finding 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, on the following described property:

LT 9 AND LT 10, BLK 3, STONEBRAKER HGTS ADDN, City of Tulsa, Tulsa County, State of Oklahoma

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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.

Mr. Cuthbertson reminded the Board this application is not to determine if this use is allowed on the property. It is to verify that this particular use meets the spacing requirements in the zoning code.

Presentation:

Jeffrey Levinson, 9308 South Toledo, stated he is the attorney for the purchaser of the subject property. He read the new ordinance regarding the spacing requirement. Mr. Levinson obtained a survey on which a 1,000 ft. line was drawn from the property lines to encompass all properties that would be in the spacing requirement. He determined the businesses within the 1,000 ft. by going to the site and viewed surrounding properties. He also searched through map quest on the internet and contacted the Department of Human Services for all registered day care centers.

Interested Parties:

Mark Petridge, 320 South Boston, stated he is an attorney and represented Advanced Composites. They own property adjacent to the subject property. He pointed out there is a private park directly across the street from the subject property. He submitted a map, photographs and a sketch (Exhibits B-1, B-2, B-3). He mentioned the Union School that is just outside of the 1,000 ft. radius. He mentioned a private park at the Metropolitan Life facility. He informed the Board the parks are within the 1,000 ft. spacing. He added that the park across the street is a wildlife refuge, maintained and developed by the Ford Glass Plant for many years. On the photographs he pointed out the signs that have been posted and the walking trails. Mr. Petridge informed the Board that the Union Public School District students use the private park. The Boy Scouts of America, Troop 975 have park benches and a blind to observe wildlife.

Comments and Questions:

Mr. Boulden asked if the parks are dedicated to park use. Mr. Petridge stated it is a wildlife nature habitat. Mr. Boulden also asked if some of this area is required for landscaping and if it has been required to be preserved as a wetland. Mr. Petridge did not know. He informed the Board that a representative of the Ford facility was present to speak to those questions.

Bryan Coates, 9526 South 88th East Avenue, stated he is the Facility Engineering and Maintenance Manager at the Visteon Glass Plant. He informed the Board that in 1998 they began to preserve the area around the stormwater detention pond as a wildlife habitat. They partnered with other organizations including Union Public Schools, Wildlife Habitat Council, the Tulsa Zoo, and federal and state wildlife

conservation personnel to develop a long-term plan. Mr. Coates responded that to his knowledge they have no requirement to maintain the area as a wetland. He submitted a mission statement with a list of potential projects (Exhibit B-3) for students to have an educational opportunity. They have established a Family Service and Learning Center, which is intended to provide educational opportunities for employees, retirees and their families. The long-range plan is to construct a dedicated, free-standing structure for this type of use and one of the potential sites is near the pond and plant entrance. They have an Easter Egg Hunt and a Fall Festival on the front of the lawn. He informed the Board that hundreds of employee hours have been donated and a great amount of money has been spent to develop the area around the pond for use as an educational facility.

Mr. Boulden asked if Visteon was required to construct the area for a stormwater drainage facility. Mr. Coates did not know. In response to numerous questions Mr. Coates stated they have not advertised the park and they do not have a website. They have placed a sign with the name of the park area. They do not have parking at this area, but there is adequate parking at the plant.

Mr. Boulden stated the code does not have a definition of a private park or public park. He suggested it would be what people in general would perceive as a park. Mr. Alberty indicated that is what the Board needs to determine by interpreting the code.

Jerry Mindenhall, 9919 East 97th Street East, stated he is the Assistant Principal at Union Public Schools. They have considered this an outdoor classroom for students. They teach environmental science as part of the curriculum and bus students to this area as a nature preserve. He stated that the school property is not in the 1,000 ft. radius, but they do use the park frequently.

Paul Wilson, 2121 South Columbia, stated he owns the property to the north of the subject property. He recognized the site as a park. He was in support of a strict application of the 1,000 ft. spacing from this park.

Jack Saumderhoff, 2642 East 21st Street, represented IMAX Corporation. The park was used by employees at lunch time.

Councilor James Mautino, City of Tulsa City Council, expressed concern that the location was not appropriate with the surrounding uses. He submitted a photograph (Exhibit B-5) to the Board.

Applicant's Rebuttal:

Mr. Levinson submitted a map that was prepared by INCOG (Exhibit B-4), which did not indicate a park in that location. He stated that he did not see anything that resembled a park. He stated he has never seen children there and there is no recreational equipment. He pointed out that it is not registered as a park.

Mr. Dunham asked Mr. Alberty about the park not being on the map. Mr. Alberty replied that the map is created off of the INCOG database. The map was not intended to locate private parks. He added that is the reason for this hearing to identify things that might be overlooked within the 1,000 ft. radius. That is what Visteon has brought to attention. Mr. Henke noted that the Boy Scouts erected their blind for a reason, the schools use it, which shows there is a need for it and people use it.

Board Action:

On **Motion of Paddock**, the Board voted 5-0-0 (Dunham, Stephens, Paddock, Stead, Henke "aye"; no "nays"; no "abstentions"; no "absences") to **DENY** a Verification of spacing requirement for Use Unit 1212a.C.2, SECTION 705.B. LOCATION OF SEXUALLY-ORIENTED BUSINESSES, finding the spacing requirement in SECTION 705.B. has not been met, therefore Use Unit 12a would not be an appropriate use for this property, on 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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NEW APPLICATIONS

Case No. 19976

Action Requested:

Special Exception to modify the allowable height of a fence in the required front yard from 4 ft to 6 ft (Sec. 210.B.3), 3102 South Madison Avenue East.

Presentation:

James Wall, 2953 South Detroit, stated he is the builder for Mr. and Mrs. MacKool. They were notified by the City of Tulsa that the fence in the front yard was not in compliance with the code. They asked for the special exception for security purposes. They are currently remodeling the home. The Neighborhood Inspectors showed them how to modify the fence at the corner to comply. They would like to keep the six foot height to keep in their large dogs. He submitted photographs and a plot plan (Exhibit C-2). He pointed out that there are some irregularities in the neighborhood regarding fences.

Interested Parties:

Greg Jennings, 2260 South Troost Avenue, submitted some photographs (Exhibit C-1) of the applicant's property. He knew that some of the fences in the area were built without permits. Mr. Dunham commented that some of them were built before the zoning code requirements. Mr. Cuthbertson stated that the code was adopted in 1970. Mr. Jennings asked for an explanation of where a side yard fence stops and a front yard fence begins. Mr. Dunham stated that anything in front of the front

setback line. Mr. Jennings stated this fence was inappropriate and the hardship is self-imposed.

Herb Beattie, 3474 South Zunis Avenue, stated he represented the neighborhood. They consider the fence inappropriate for the neighborhood. This is a corner lot where there is heavy pedestrian and auto traffic, including events such as the Tulsa Run. After discussing the case with the applicants they understood their compelling arguments for a special exception but hope this will not set a precedent.

Applicant's Rebuttal:

Mr. Wall reminded the Board there is an eight foot concrete wall across the street.

Maggie MacKool, stated she lives in the home on the subject property. She described problems with someone coming into their yard to sit on their porch during the July 4 Riverparks activities and was involved in an altercation in her front yard. Her husband is seriously ill and they are concerned for safety reasons.

Comments and Questions:

Ms. Stead asked if the contractor informed them that a permit was required for the fence. Ms. MacKool replied that he did not. She added that when they were advised of the need for the sight distance triangle, they made those revisions to the construction. She was advised that a four-foot fence would be too easy for someone to climb over.

Board Action:

On **Motion** of **Paddock**, the Board voted 5-0-0 (Dunham, Stephens, Paddock, Stead, Henke "aye"; no "nays"; no "abstentions"; no "absences") to **DENY** a **Special Exception** to modify the allowable height of a fence in the required front yard from 4 ft to 6 ft (Sec. 210.B.3), finding it will not be in harmony with the spirit and intent of the Code, and would be injurious to the neighborhood or otherwise detrimental to the public welfare, on the following described property:

N.5 OF LT 44 & ALL OF LT 45 BLK 5, BROOKSIDE ADDN AMD, PEEBLES SECOND ADDN, City of Tulsa, Tulsa County, State of Oklahoma

Case No. 19977

Action Requested:

Variance of maximum display surface area to permit an existing wall sign having a display surface area of 142 sq. ft. (294.97 ft frontage on S. Yale), 5314 South Yale Avenue East.

Presentation:

John Moody, 1800 South Baltimore, Suite 900, stated he represented the bank. A sign plan was provided in the application. The sign was previously approved

before the increase of size of the existing sign. The small size of the tract and the small frontage is the hardship.

Interested Parties:

There were no interested parties present who wished to speak.

Board Action:

On **Motion** of **Paddock**, the Board voted 5-0-0 (Dunham, Stephens, Paddock, Stead, Henke "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a **Variance** of maximum display surface area to permit an existing wall sign having a display surface area of 142 sq. ft. (294.97 ft frontage on S. Yale), finding would not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan, and finding the literal interpretation of the code would work an unnecessary hardship, on the following described property:

LT 1 BLK 1 , L.V. ONE, LA FORTUNE PARK PLAZA, LINCOLN ESTATES, City of Tulsa, Tulsa County, State of Oklahoma

Case No. 19979

Action Requested:

Special exception for a church and church use in an IL zoned district and a variance of the required number of parking spaces, 4705 South Memorial Drive East.

Presentation:

John Moody, 1880 South Baltimore, Suite 900, stated he represented the Believers' Church. The location is in the former Name Brand Clothing store, in an IL district. They have been looking for a location in the geographical area of the members.

Mr. Henke out at approximately 2:51 p.m. and returned at 2:53 p.m.

Mr. Moody submitted a site plan and parking analysis (Exhibits D-1 and D-2). The sanctuary size is 1,029 sq. ft. He determined that 161 parking spaces would be available. Helmerich and Payne have signed a parking agreement to share parking to the south, as the church hours would not be the same as office hours. Name Brand Clothing has also given the church permission to use their parking to the east. He did not bring the agreements at this time since they do have a clause to revoke the agreement with a two-week notice from the property owners.

Comments and Questions:

Mr. Cuthbertson noted that the required parking is 233 spaces, based on the 698 seats in the sanctuary.

Interested Parties:

There were no interested parties present who wished to speak.

Board Action:

On **Motion** of **Paddock**, the Board voted 5-0-0 (Dunham, Stephens, Paddock, Stead, Henke "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a **Special exception** for a church and church use in an IL zoned district, per plan; and a **Variance** of the required number of parking spaces from 233 to 161, with condition that applicant provide the two written parking agreements for the record, finding the church hours are different than the surrounding businesses, such that the parking variance would not be injurious to the surrounding businesses, on the following described property:

LT 1 LESS W551.31 N199.58 THEREOF & LESS N300 THEROF BLK 1 ,
JONES TRUCKING CTR, SECOND RESEARCH & DEVELOPMENT CTR
RESUB, RICHPARK ADDN RESUB OF RESUB SECOND RES & DEV CTR,
City of Tulsa, Tulsa County, State of Oklahoma

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Case No. 19965

Action Requested:

Request for refund.

Presentation:

Mr. Cuthbertson informed the Board that the applicant withdrew the case before it was processed. Staff recommended a full refund.

Board Action:

On **Motion** of **Paddock**, the Board voted 5-0-0 (Dunham, Stephens, Paddock, Stead, Henke "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** the refund request for the full amount.

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Case No. 19980

Action Requested:

Request for refund.

Presentation:

Mr. Cuthbertson informed the Board that the applicant withdrew the case before it was processed. Staff recommended a full refund.

Board Action:

On **Motion** of **Paddock**, the Board voted 5-0-0 (Dunham, Stephens, Paddock, Stead, Henke "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** the refund request for the full amount.

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There being no further business, the meeting was adjourned at 3:11 p.m.

Date approved:_____

Chair