

CITY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 905
Tuesday, February 22, 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**

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, February 18, 2005, at 11:19 a.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. Cuthbertson read the rules and procedures for the Board of Adjustment Public Hearing.

MINUTES

On **MOTION** of **Stead**, the Board voted 5-0-0 (Dunham, Henke, Paddock, Stead, Stephens "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** the Minutes of February 8, 2005 (No. 904).

UNFINISHED BUSINESS

Case No. 19978

Action Requested:

Verification of spacing requirement for Use Unit 12.a; at least 1,000 ft. from any other Sexually Oriented Business, church, school, public/private park, residential dwelling units in either R or AG zoned districts, and uses in Use Unit 2 and 5

caring for or often frequented by persons under 18 years of age, located: NW/c of S. Garnett Rd. and E. 58th St.

Mr. Dunham asked for a comment from staff or legal regarding a letter from the applicant, John Moody. Mr. Ackermann responded that the City attorneys have considered the letter and Motion In Limine, made by Mr. Moody. They determined it would be difficult to apply that type of motion to this type of public hearing. Mr. Ackermann stated that the usual instructions limiting the comments would be sufficient.

Mr. Dunham stated for the benefit of all that the hearing of this case was strictly to determine if the spacing requirements have been met, and not whether this is an appropriate use for the location.

Presentation:

John Moody, 1800 South Baltimore, Ste. 900, stated he represented the owner of the property. They propose to open a night club, which would be a sexually-oriented business. He stated it appeared by the City Attorney's recommendations and the Chair's comments that the Board has over-ruled his Motion in Limine. He reviewed the 1,000 ft. spacing required from facilities listed in the zoning code. Mr. Moody submitted a survey of the 1,000 ft. radius, as required by the Board. He provided an aerial and photos (A-1 and A-2). He requested that no evidence of any use be provided without a survey that proves they are in the 1,000 ft. radius since his client has been required to provide one. He also asked that any property used in evidence that is a Use Unit 2 or 5 not be allowed if they have not obtained a Special Exception for that use, if it is required. He cited the Equal Protection Clause of the United States Constitution in the state of Oklahoma as the reason for this request. He provided maps of the area (Exhibits A-7a and A-7b). Mr. Moody showed a photograph of the detention facility. He pointed out that though there are trails, ball fields and other evidence of private and public use it was intended for a detention facility as per the resolution for condemnation action. The court petition, bond issue ordinance (Exhibit A-6), Corp of Army Engineers, and the federal government flood control project all indicate the funding was for a stormwater detention project. He noted that no special exception was obtained for a park facility. He determined through research that the Blessings International organization was not a church. The indoor soccer facility is a Use Unit 19 and was approved by the Board of Adjustment for soccer only (Exhibits A-8 and A-9). He showed that the Baseball Academy of Tulsa has not received a special exception from the Board to be in an industrial district.

Comments and Questions:

Ms. Stead noted that the applicant's surveyor certification did not mention anything about use by persons under age 18. She reminded Mr. Moody that this is a public hearing and his motion does not prevent them from considering other evidence. Mr. Moody responded that his request was that the interested parties provide the same level of evidence, (i.e., a survey), as the applicant is required to do.

Interested Parties:

Steve Schuller, 100 West 5th Street, Suite 500, stated he represented Bevins Enterprises, in opposition to the application. Their property is to the north and west of the subject property. He noted that the survey did not reference the public park. He maintained that the city stormwater detention pond and park extends from 61st Street on the south to 109th East Avenue. He pointed out that it is located less than 500 ft. from the subject property. Mr. Schuller noted that the general warranty deed, the eminent domain proceedings (Exhibits A-3 and A-4), notices, and the report of commissioners recognize the property for public use; and do not limit the use of the property to a stormwater detention area. The funding used to acquire public property does not necessarily limit the use of the property. An applicable Oklahoma statute expressly permits the city to establish parks, playgrounds, athletic fields, and other facilities on whatever land they own. The Public Parks Department stated the name of this park, when he called them. They informed him that the park is called Golden Valley, which contains a one and a quarter mile trail. He informed the Board that the in-door soccer facility has been used for many years. Mr. Schuller stated that nothing about the baseball field, soccer facility, park benches, or hundreds of trees that have been planted furthers any stormwater detention function. He added that the word park has been defined by appellate court decisions in Oklahoma to be an open area containing, among other things: seats, paved pathways used by the public as a place for recreation and amusement; laid out so as to afford pleasure to the eye, as well as opportunity for open-air recreation, as well as grounds set apart for public health and welfare.

Comments and Questions:

Ms. Stead asked if these trails were ever designated as part of the sixty-six miles of trails in Tulsa. Mr. Schuller did not know of any connection to the planned Tulsa trails. Mr. Dunham mentioned the locked gate to the trail. Mr. Schuller replied that he has seen it unlocked at times. Mr. Paddock asked if it was a City Park and the age of the park. Mr. Schuller responded that he understood it is maintained by the city and he did not know how long the park has been there. He added that when he called the Parks Department, the representative referred to the park by name and talked about the nice trail. He could not remember with whom he spoke.

Interested Parties:

Michelle Kremers, 9525 South 95th East Avenue, stated she spoke on behalf of the Oklahoma Rebels twelve and under baseball team. In April 2003, her husband contacted the City of Tulsa Parks Department. They referred him to Roy Teeters, Manager with the Surface Drainage/Vegetation Management. Mr. Teeters granted them permission to put in the ball field, with conditions (Exhibit A-10). They have been using it and maintaining it since then. She stated there has not been a time when they could not use the field for flooding. They do not lease the property.

Councilor James Mautino, 14628 East 12th Street, stated he has seen cars parked on 197th East Avenue by Golden Acres Park. He talked with some people that were jogging on the trail. He verified that the Tulsa Fire Arms is a shooting

range (U.U. 2). He stated it appeared to be a park and the people he talked with there considered it a park.

Applicant's Rebuttal:

Mr. Moody responded by stating the petition taken by Mr. Boulden specifically stated the property was taken for a stormwater detention facility. The report of the commissioners is just appraisers who ascertain the market value of the property being taken. He stated that just because joggers use the area does not constitute a park. He stated the name given for this property comes from the name of the old East Golden Valley Subdivision, but there are no signs naming it a park. There is no letter from the Parks Department. The existence of the baseball field does not change the character of the property. The zoning code requires that the baseball organization obtain a special exception to have a field on this facility. The Tulsa Fire Arms is a retail gun sales business with a firing range. This is a use unit 2 and requires a special exception, which has not been approved.

Board discussion ensued.

Board Action:

On **Motion** of **Henke**, to **CONTINUE** to the next meeting, was seconded by Paddock with the condition for a letter to be provided from the Parks Department that identifies Golden Valley as a park. Ms. Stead called for a voice vote. The Board voted 2-3-0 (Paddock, Henke "aye"; Dunham, Stephens, Stead "nay"; no "abstentions"; no "absences") and the motion failed for lack of a quorum vote.

On **Motion** of **Stead**, the Board (voice) voted 2-3-0 (Stead, Henke "aye"; Dunham, Stephens, Paddock "nay"; no "abstentions"; no "absences") to **DENY** a Verification of spacing requirement for Use Unit 12.a; at least 1,000 ft. from any other Sexually Oriented Business, church, school, public/private park, residential dwelling units in either R or AG zoned districts, and uses in Use Unit 2 and 5 caring for or often frequented by persons under 18 years of age, finding the 1,000 ft. spacing has not been met; and motion failed for lack of a quorum vote.

On **Motion** of **Stevens**, the Board (voice) voted 3-2-0 (Dunham, Stephens, Paddock, "aye"; Stead, Henke "nay"; no "abstentions"; no "absences") to **APPROVE** a Verification of spacing requirement for Use Unit 12.a; at least 1,000 ft. from any other Sexually Oriented Business, church, school, public/private park, residential dwelling units in either R or AG zoned districts, and uses in Use Unit 2 and 5 caring for or often frequented by persons under 18 years of age, finding the 1,000 ft. spacing has been met, on 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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NEW APPLICATIONS

Case No. 19982

Action Requested:

Variance of the required number of parking spaces from 22 to 12 to allow the expansion of the existing facility, located: 1125 S. Peoria.

Presentation:

Mark Agee, 1125 South Peoria, stated he is one of the owners of the Cool Storage Facility at that address. He added that his partner, Danny Mitchell, intended to be present but could not attend on this date. He pointed out the small lots in this area and added that this type of facility generates minimal traffic. He estimated that five vehicles has been the maximum at any one time. He introduced David Dixon, Vice-President with Universal Management Company that manages this facility. He has statistics of parking spaces used in storage facilities of similar size.

David Dixon, 4451 South Atlanta Road, Suite 210, Smyrna, Georgia, stated they manage thirty-two self-storage facilities; the largest is 135,000 feet, with fourteen spaces. The smallest is 30,000 feet and has four parking spaces. This facility, when fully expanded, will be a little less than 100,000 feet and would have twelve parking spaces. When it is at fully capacity with 500 customers, the estimate would be about ten customers per day.

Comments and Questions:

Ms. Stead asked if they were adding onto the existing structure or building a separate facility and if it would also be cool storage. Mr. Dixon responded they would be adding to the existing structure and it would be cool storage. Mr. Dunham and Ms. Stead agreed approval would need to be per plan (Exhibit F-1) and no member disagreed. Mr. Dunham noted in the staff comments that the applicant can demonstrate that the code requirements are excessive for this use. Mr. Ackermann asked if the building would cross all property lines. Mr. Dixon replied that it would cross all property lines. Mr. Cuthbertson responded to discussion regarding lot ties that the intention of a tie agreement is to prevent the sale of one of the lots. The fact that the buildings would be built over the lots would make it impractical to sell a lot.

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, Henke, Paddock, Stead Stephens "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a **Variance** of the required number of parking spaces from 22 to 12 to allow the expansion of the existing facility, per plan, finding the lots in this area are very narrow, and 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, on the following described property:

LTS 31 THRU 44 BLK 4, ORCHARD ADDN, City of Tulsa, Tulsa County, State of Oklahoma

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Case No. 19984

Action Requested:

Variance of rear yard setback from required 20 ft to 12 ft 8 inches to permit an addition -- SECTION 403.A. -- Use Unit 6, located: 1719 S ROCKFORD AV E.

Presentation:

Jim Turner, 1719 South Rockford, stated they proposed to build an addition to their home. The hardship is that the lot is non-conforming for RS-3. The length of the lot is 140 ft. for the alley. He discovered there are five living spaces and four detached garages that are within the 20 ft. rear yard setback. The house was set back from Rockford 35 ft. in the front yard to line up better with the houses on the street.

Comments and Questions:

Ms. Stead commented that the next door neighbor's garage is on the rear property line. Mr. Dunham asked if they are adding on garage space to the rear. Mr. Turner replied they would turn the existing garage space into living space and add the garage to the back.

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 rear yard setback from required 20 ft. to 12 ft. 8 inches to permit an addition, per plan, finding the setback is compatible with the neighborhood, and it would not compromise the zoning code because there is a 20 ft. alley at the rear of the subject lot providing additional space between the adjacent lot, and finding it was approved by the Tulsa Preservation Commission, on the following described property:

LT 12 BLK 21, ORCUTT ADDN, City of Tulsa, Tulsa County, State of Oklahoma

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Case No. 19985

Action Requested:

Verification that a family day care home is not within 300' of another lot that contains a family day care home on the same street -- SECTION 402.B.5.g. Accessory Use Conditions -- Use Unit 6, located: 6706 E 17 ST S.

Mr. Paddock out at 2:44 p.m.

Presentation:

Ronald Sanders, 6706 East 17th Street, stated he owns a duplex on 6708 East 17th Street also.

Comments and Questions:

Mr. Dunham informed the interested parties that this case comes before the Board to determine if it meets the spacing requirements, not to determine if this is an appropriate use. He informed Mr. Sanders that the Board needs some instrument such as a survey, to determine the spacing. Mr. Boulden stated that a survey is not required by the ordinance.

Mr. Paddock returned at 2:46 p.m.

Mr. Ackermann stated, for clarification, the 300 ft. radius applies to any family home day care where the boundary line abuts the same street.

Interested Parties:

Roy W. Rogers, 6714 East 17th Street, stated he has lived next door for many years. He stated that to his knowledge there are no other family day care homes in the area. He is in support of the day care with up to seven children. He asked if the tenant/operator of the day care stopped working there, could someone else come in and open with more children. Mr. Dunham responded they could not increase the business as specified without further approval. Ms. Stead commented another operator would have to be licensed.

Mr. Dunham noted that the street curves with two different names. Mr. Cuthbertson stated that was taken into consideration and the 300 ft. radius was determined for both street names.

Mr. Rogers reiterated that having lived there for about ten years and there are not any other day care homes within 300 ft.

Troylene White, 1825 South 71st East Avenue, stated that she is the President of the Leisure Lane Neighborhood Association. They do not oppose the day care home. They expect it to be kept clean and follow the ordinances of their neighborhood and they do not want it to be larger. She was comfortable that the spacing requirement is met.

Mr. Dunham asked for the name of the operator. Mr. Sanders replied she is Kenetra Felder. See the day care license (Exhibit C-1).

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** Verification that a family day care home is not within 300' of another lot that contains a family day care home on the same street, with conditions: limited to a family day care home per the current licensed operator, Kenetra Felder; and contingent on the applicant providing an affidavit verifying the 300 ft. spacing requirement, on the following described property:

LT 18 BLK 8, LEISURE LANES, TWENTY-FIRST AND SHERIDAN CENTER
8TH ADDN RESUB PRT L1, City of Tulsa, Tulsa County, State of Oklahoma

Case No. 19987

Action Requested:

Special Exception to allow Use Unit 6, Single Family Dwelling, in a CS zoned district, located: 1040 S. 127th E. Ave.

Presentation:

Bill Colford, 18008 East Brady, Catoosa, stated he is with W. D. Construction and he represented the applicant, Paul Turney. The house was built in the 1940 's. They proposed to put on a new roof and enclose a room.

Comments and Questions:

Mr. Dunham asked why he needs the special exception. Mr. Cuthbertson replied that in order to get the building permit, he has to have a special exception to allow a residential dwelling in a CS district.

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** to allow Use Unit 6, Single Family Dwelling, in a CS zoned district, 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:

SE SW SE SE LESS BEG SWC SE SW SE SE TH N50 E289.22 NE28.18 N APR
260.97 E20 S TO SECR SE SW SE SE TH W TO POB FOR STS SEC 5 19 14
1.988ACS, City of Tulsa, Tulsa County, State of Oklahoma

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Case No. 19988

Action Requested:

Variance of the required 25 ft. building setback to 10 ft. along Peoria and East 44th Place for Lot 14 and along Peoria for Lot 13 to allow for the construction of an office building, located: 1316 E 44 PL S.

Presentation:

John Duvall, 123 East 21st Street, stated he is the architect for Sam Morales, the owner of Lots 13 and 14, on the corner of South Peoria and 44th Place. Mr. Morales plans to build an office building on Lot 14 (the corner lot). The offices would be for Advisors' Financial Group, and a State Farm office. He listed the treed median and service road that separates the lot frontage from Peoria and the required 25 ft. front setback would place the commercial building 90 ft. from the east curb on Peoria. This would reduce visibility from Peoria and would hinder the viability of a commercial development on these lots. These lots are narrower than other commercially-zoned properties in the area, as they were originally residentially-zoned. The reduction of the setback would bring the new construction more in line with the retail center to the north and the apartment building to the south.

Comments and Questions:

Mr. Dunham noted this would also line up with the existing dwelling to the east.

Mr. Duvall continued, stating Mr. Morales has contacted the surrounding property owners and obtained letters of support (Exhibit D-1) from all but one of the adjacent owners. Mr. Stevens asked for a site plan or elevation. Mr. Duvall stated they have just begun the schematic design. They propose a residential style, one-story up to a maximum of 3,600 sq. ft. A copy of the sketch and letter that went to the neighbors was submitted (Exhibit D-3).

Sam Morales, 1410 East 43rd Court, stated he is the owner of the subject property, and a Brookside merchant with offices at 4821 South Peoria. This was previously a part of the Wilder Addition. The original covenants are no longer valid (Exhibit D-2). They are not asking for a parking variance and would provide in excess of the required parking. The entrance and parking would be in the rear of the property. This would be a low-traffic facility. They would have two full-time employees and the building would be owner-occupied.

Interested Parties:

Herb Beattie, 3474 South Zunis Avenue, stated that the Brookside Neighborhood Association is in support.

Sondra Cherry, 4420 South Quaker Avenue, expressed support of the application.

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 the required 25 ft. building setback to 10 ft. along Peoria and East 44th Place for Lot 14 and along Peoria for Lot 13 to allow for the construction of an office building, 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; finding it is within the Comprehensive Plan for District 6 as it applies to Brookside; finding it this proposed construction will line up with the buildings to the south and east; and the literal enforcement of the code would impose an unnecessary hardship in this case, on the following described property:

LT 13 & 14 BLK 5, WILDER ADDN, City of Tulsa, Tulsa County, State of Oklahoma

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Case No. 19989

Action Requested:

Variance of the required parking spaces from 200 spaces to 50 spaces to allow for the construction of a light industrial facility, located: 9903 E. Pine St.

Presentation:

Bruce Rothell, 220 East 8th Street, stated he represented his engineering firm for Ameristar Fence Products Company. They do light manufacturing. The building is 150,000 square feet. He submitted a new site plan (Exhibit E-1). They estimate a maximum of 50 employees in the future.

Mr. Stevens out at approximately 3:29 and returned at 3:31 p.m.

Comments and Questions:

Mr. Dunham asked for the hardship. Mr. Rothell replied there is no reason they would ever need 200 parking spaces at this facility. He added that the amended plan provides for 78 parking spaces, including six handicapped spaces. Ms. Stead asked if the future parking would be along Pine Street. Mr. Rothell stated they could put more parking there or where they plan to put semi-trailer parking.

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 the required parking spaces from 200 spaces to 50 spaces to allow for

the construction of a light industrial facility, per plan, and per the proposed use, finding a literal interpretation of the code would cause a hardship for this applicant; and 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, on the following described property:

Lot 1, Block 1, Ameristar E Coat Plant Addition, , City of Tulsa, Tulsa County, State of Oklahoma

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Case No. 19990

Action Requested:

Variance to allow an existing outdoor advertising sign 1,080 ft. from a freeway corridor and a variance of the required 1,200 ft. from another outdoor advertising sign to 170 ft., located: 2 S ELGIN AV E.

Presentation:

Ted Sack, 111 South Elgin, with Sack and Associates, proposed an off-premise sign, which would be a billboard. He pointed out the location and the access approved by the Fire Marshall. It is an existing sign, about five ft. by six ft. and 27 ft. in height. It would be repainted. It is not a non-conforming sign as it has not existed long enough. It was used for La Petite Academy and was owned by the property owner.

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** to allow an existing outdoor advertising sign 1,080 ft. from a freeway corridor; and a **Variance** of the required 1,200 ft. from another outdoor advertising sign to 170 ft., finding the lot size is unusual, surround by Detroit and Cincinnati, both of which are elevated bridges, and the Wiltell parking structure to the south have created a hardship for this business to advertise on the lot; 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, on the following described property:

A TR BEG NEC BLK 75 TH N109.08 WLY320.47 SWLY59.82 SLY TO NEC BLK 74 TULSA OT ELY151.60 N100 ELY228.4 POB SEC 1 19 12 1.34ACS & N75 LT 1 & N85 LT 6 &N85 VAC ALLEY BTW BLK 75, TULSA-ORIGINAL TOWN, City of Tulsa, Tulsa County, State of Oklahoma

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OTHER BUSINESS

Case No. 19986

Action Requested:

Request for refund.

Presentation:

The staff recommended a \$629.00 refund.

Board Action:

On **Motion** of **Stead**, the Board voted 5-0-0 (Dunham, Stephens, Paddock, Stead, Henke "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a Refund of \$629.00.

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Case No. 20012

Action Requested:

Case withdrawn/Request for refund.

Presentation:

The staff recommended a \$735.00 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** a Refund of \$735.00.

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There being no further business, the meeting was adjourned at 3:45 p.m.

Date approved: _____

Chair