

CITY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 914
Tuesday, July 12, 2005, 1:00 p.m.
Francis F. Campbell City Council Room
Plaza Level of City Hall
Tulsa Civic Center

MEMBERS

PRESENT

Dunham, Chair
Henke, Secretary
Stead

MEMBERS

ABSENT

Paddock, Vice Chair
Stephens

STAFF

PRESENT

Butler
Cuthbertson

OTHERS

PRESENT

Ackermann, Legal

The notice and agenda of said meeting was posted in the City Clerk's office, City Hall, on Thursday 7, 2005, at 12:46 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. Cuthbertson read the rules and procedures for the Board of Adjustment Public Hearing.

MINUTES

On **MOTION** of **Stead**, the Board voted 3-0-0 (Dunham, Henke, Stead, "aye"; no "nays"; no "abstentions"; Paddock, Stephens "absent") to **APPROVE** the Minutes of June 14, 2005 (No. 912).

UNFINISHED BUSINESS

Case No. 20065

Action Requested:

Special Exception to allow Use Unit 11 - Office, Studios & Support Services in an RM-2 zoned district (Section 401) and a Variance of the required number of parking spaces for an office from 9 to 6 (Section 1211.D), located: 1632 South Denver Avenue West.

Presentation:

Kayle Greiman, 1406 South Delaware Place, submitted two letters of support (Exhibit A-1) from his adjacent neighbors, Eric Rob and Lori Hastings.

Comments and Questions:

Mr. Greiman responded to questions of the Board members. He intends to keep the existing slab by the garage and provide parking spaces for six vehicles. The single parking space north of the garage will be accessible from the alley. They hope to lease the four to six offices to a single tenant. He compared the available office space and parking space with other properties in the area and found this property to be comparable. There has been strong neighborhood support.

Interested Parties:

Ann Pollard, 1318 South Carson, is currently the Riverview Neighborhood Association President. She spoke for herself in support of the application.

Board Action:

On **Motion** of **Stead**, the Board voted 3-0-0 (Dunham, Henke, Stead "aye"; no "nays"; no "abstentions"; Paddock, Stephens "absent") to **APPROVE** a **Special Exception** to allow Use Unit 11 - Office, Studios & Support Services in an RM-2 zoned district (Section 401), and a **Variance** of the required number of parking spaces for an office from 9 to 6 (Section 1211.D), finding the extraordinary conditions or circumstance peculiar to this particular land and the structure, the literal enforcement of the terms of the code would result in an 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; and as to the special exception, 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 8 BK 5, STONEBRAKER HGTS ADDN, City of Tulsa, Tulsa County, State of Oklahoma

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Mr. Cuthbertson informed the Board that Mike Moydel, with Oil Capitol Neon, requested a continuance of Case No. 20076 because of the minimum number of Board members for a quorum vote. He changed his mind, after speaking with Mr. Dunham, and stayed to present his case as on the agenda.

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Case No. 20070

Action Requested:

Special Exception to allow a carport (Section 210.B) in a residential district (RS-3), located: 2749 South Darlington Avenue East.

Presentation:

Alfred Goode, 2749 South Darlington Avenue, informed the Board the carport is already built. He discovered he needed a special exception, and found the neighbors are in support of the application. He stated it keeps his garage and vehicle cooler on the west side of the house. He submitted photographs (Exhibit B-2).

Comments and Questions:

Mr. Dunham noted several interested parties were present and found they were in support and none in opposition. The Board received one letter of support (Exhibit B-1). Mr. Goode responded to questions, stating he built it last fall around October or November.

Board Action:

On **Motion of Stead**, the Board voted 3-0-0 (Dunham, Paddock, Stephens "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a **Special Exception** to allow a carport (Section 210.B) in a residential district (RS-3), 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 15 BLK 2, GRANDVIEW MANOR ADDN, LORTONDALE ADDN,
LORTONDALE 2ND ADDN, City of Tulsa, Tulsa County, State of Oklahoma

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Case No. 20071

Action Requested:

Variance of the setback from the centerline of 31st St. to 81.3 ft. to permit the existing building in a CS district (Section 703), located: 9026 East 31st Street South.

Presentation:

Harold Caylor, 6705 East 65th Street, is the applicant and owner of the subject property. He stated they wanted to correct an error in calculations for a variance in 1980. They found that to enclose the canopy they needed a four-foot variance, which they obtained. Then the architect obtained a correction from the Board in August 1980 for 14' variance. He and his wife bought out their partner's half of the property. They recently discovered another error in the calculations and wanted to correct it. A site plan was provided (Exhibit C-1).

Interested Parties:

There were no interested parties who wished to speak.

Board Action:

On **Motion** of **Henke**, the Board voted 3-0-0 (Dunham, Henke, Stead "aye"; no "nays"; no "abstentions"; Paddock, Stephens "absent") to **APPROVE** a **Variance** of the setback from the centerline of 31st St. to 81.3 ft. to permit the existing building in a CS district (Section 703), with no further expansion to the north, finding the existing conditions; finding it will not cause substantial detriment to the public good or impair the purpose, spirit and intent of the code or Comprehensive Plan, per plan, on the following described property:

BEG 30E NWC LT 1 TH E150 S93 W150 N93 POB BLK 1, BRIAR VILLAGE RESUB BRIARWOOD CTR SECOND AMD, City of Tulsa, Tulsa County, State of Oklahoma

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Case No. 20072

Action Requested:

Variance of the minimum square footage for a principal building required to permit a beauty salon in an OM district (Section 604.C.1); and a Special Exception to permit a beauty salon in an OM district (Section 601), located: 5537 South Lewis Avenue East.

Mr. Cuthbertson informed the Board that staff and the City legal representative determined the variance was not needed in this case. Mr. Ackermann stated they determined that under Table 2, under Section 602, the beauty salon is allowed as an accessory purpose. The variance was stricken.

Presentation:

Steve Gray, 4530 South Sheridan, Suite 205, stated he is the attorney for the owners of the building. He indicated the beauty salon would not cause heavier traffic or cause traffic to go into the neighborhood.

Interested Parties:

There were no interested parties who wished to speak.

Board Action:

Ms. Stead noted the Variance was stricken.

On **Motion** of **Stead**, the Board voted 3-0-0 (Dunham, Henke, Stead "aye"; no "nays"; no "abstentions"; Paddock, Stephens "absent") to **APPROVE** a **Special Exception** to permit a beauty salon in an OM district (Section 601), 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 1 BLK 1, LEWISCREST ADDN, OPEN WORLD, OPEN WORLD SECOND,
City of Tulsa, Tulsa County, State of Oklahoma

Mr. Cuthbertson stated that a refund for the variance will be requested at the next meeting.

Case No. 20073

Action Requested:

Variance of the required 150 ft of frontage in a CS zoned district to 90.2 ft on an existing lot; Section 703. - Use Unit 14, located: 516 South Sheridan Rode East.

Presentation:

Kenneth Ray Firey, 20102 West 61st Street South, Sand Springs, Oklahoma, stated this request is to put a driveway into an existing commercial lot that does not meet the 150' frontage requirement. There is one existing curb cut from Sheridan. It was originally a residential property. There is commercial property on both sides and residential on the back of the subject property. The lot is 90.2' wide by 190' deep, and sufficient to support a commercial building.

Comments and Questions:

In response to questions, Mr. Firey stated the legal description has been the same since 1953. He had an abstract from 1953 with him that shows the same description. After reviewing the abstract, Mr. Ackermann stated it appears to be a legal non-conforming lot, therefore he would not be required to obtain a variance. Mr. Dunham stated the applicant can apply for a refund since the variance was not needed.

Interested Parties:

There were no interested parties who wished to speak.

Board Action:

The Board found this to be a legal non-conforming lot, which did not require a variance, on the following described property:

S90.2 E195 BLK 30, GLENHAVEN, City of Tulsa, Tulsa County, State of Oklahoma

Case No. 20074

Action Requested:

To appeal the decision of the neighborhood inspector that unauthorized activity is occurring in manufactured building and is contrary to relief granted in Case No. 19825, located: 2545 South Yale Avenue.

A copy of the appeal was received by the Board (Exhibit D-3); and a list of ministries (Exhibit D-4).

Mr. Dunham asked to hear from the City of Tulsa Neighborhood Inspector, since the Board members received a six to eight page document just before the meeting started that they did not have time to read.

Tim Carter, 111 South Greenwood, Field Supervisor for Neighborhood Inspections, represented Ms. Dawson who issued the notice (Exhibit D-1). There was a complaint from area residents about the use of a manufactured building behind the church. He found in the minutes of the Board of Adjustment that the building was allowed by a special exception for offices. Mr. Dunham informed him that special exception was in the original motion in the minutes by error, which were just recently reviewed and corrected. He stated that prior to the original hearing it was determined that the special exception was not needed. The Board took no action on the special exception. Mr. Carter stated Hope Community Testing advertises on the State Health Department website; the Tulsa City-County Health Department gives referrals to H.O.P.E. Testing; the State of Oklahoma provides grants and funding for the testing facility; H.O.P.E. Testing website states they allow walk-ins and testing for fees. Mr. Carter stated it was their opinion that this was a Use Unit 11, Medical Testing Facility, and not an accessory use of a church, or limited to the congregation.

Mr. Cuthbertson stated that the Board approved this case last year with the understanding that HIV testing was going to be the use. Mr. Ackermann indicated it was up to the Board to decide if the use has changed since it was approved. Mr. Carter stated that it appeared this was an accessory use for the congregation but it has broadened to a business open to the public. Mr. Carter stated that the building permit for the temporary structure has expired, which does not allow for this type of use in the temporary structure. Mr. Ackermann added the City allowed an extension of the permit until it could be heard by the Board of Adjustment.

Presentation:

Leslie Penrose, 1311 South Frisco Avenue, submitted a packet of information (Exhibit D-2a-r). They are in the process of moving the manufactured building off the property. They have moved part of the testing into the church building and part of it into an off-site location until they build the permanent building. She stated they continue to partner with other agencies to provide care, outreach, prevention and education. They share case work, staff and building space with those organizations. As a non-profit 501.3.C organization they charge at cost for testing and most tests are offered free.

Comments and Questions:

Ms. Penrose replied to questions from the Board. She stated other churches do on-site testing. There are no syringes used for HIV testing. Many of these church testing sites across the nation are funded by the National Faith-based Grants Program.

Christy Frisbee, 4629 East 13th Place, Executive Director, addressed questions from the Board and City Attorney regarding the clinic. They continue to do the same ministry they were doing last year. H.O.P.E. testing facility is open Monday thru Thursday, 9:00 a.m. to 6:00 p.m. by appointment and it is open for walk-ins from 6:00 p.m. to 8:00 p.m. They also do outreach testing off-site. They see an average of six to seven people per day and agreed with the average of 1500 to 1600 people per year. The testing site complies with state and federal medical waste guidelines. They have a good seven-year history on these reviews. She also informed the Board of the improved testing methods that consist of finger sticks and mouth swabs. It is not a laboratory facility, and samples are sent out to a lab. She stated that under the IRS, they are deemed as a community based organization, not a medical clinic. She promised to provide the Board with documentation of medical waste disposal inspections for the past few months. The manufactured home was to be removed from the property on Friday, July 15, 2005. They have received only one request for a screening fence from a neighboring resident. There is a community pool near the southeast corner of the lot and the neighbors did not want it screened.

Interested Parties:

Mark (inaudible), 4926 East 26th Terrace, a long-time resident of the neighborhood, indicated that historically the pool area has been associated with vandals.

Steven Edlick, 4962 East 26th Street, expressed support, as a long-time resident of the neighborhood.

Jim Mishler, 4330 South Louisville, Executive Director of the Tulsa Metropolitan Ministry, stated his support. He added that this is part of the traditional form of ministry.

Russell Bennett, 3328 East 58th Street, President of the Tulsa Interfaith Alliance, on behalf of their organization, expressed support of this ministry. He indicated it was consistent with what other churches are doing in the community.

Herb Beattie, 3474 South Zunis Avenue, expressed his support of this application and stated it is consistent with a residential neighborhood.

George Otey, 4815 South Harvard, Suite 270, represented the Gracemont Neighborhood Association. He stated his clients are not opposed to AIDS testing. They expressed concern though, that the Mayo website indicates that the positive quick tests require a blood test for confirmation. They requested the Board revoke the current permit and uphold the code restriction that does not allow a non-accessory use in a residentially zoned area. The mobile home has been associated with a non-accessory use, which was testing in the medical clinic. This has been a negative impact in the neighborhood. It has become a high-traffic

area, thus has stigmatized the neighborhood and negatively affected property value.

Pete Eichenberger, 4926 East 25th Place, indicated the manufactured building was 10 feet from his fence line and this has lowered the value of his property.

Pearl Vivero, 4902 East 25th Place, stated she has seen the dumpster behind the church overflowing with smelly trash. She indicated she found needles and condoms. She was concerned for the safety of her children.

Dunham out at 2:48 p.m.

She complained that many cars come in and out of the church parking lot as late as midnight. She could not identify that the traffic was going to the clinic or the church.

Dunham returned at 2:50 p.m.

Patricia Richardson, 4918 East 25th Place, stated the majority of the parking lot is adjacent to the majority of her property line. They are supportive of church groups helping people with where they need help in whatever kind of area, as long as you do not damage another group of people. She received a letter from the pastor and she was at the original hearing but she did not receive any information about the testing clinic. She has asked for a fence but has not met with Dr. Penrose yet. She stated the lighting is not pointed down and away from the neighborhood.

Thomas Richardson, 4918 East 25th Place, complained of the gravel parking lot and transactions at the testing facility near midnight.

Tim Cartner, stated this is a lawful non-conforming church. Mr. Ackermann stated if the gravel parking surface was used prior to 1970 then it was grandfathered in. He added that if it was enlarged the additions would have to be paved. A list of interested parties present was entered in the file for a record (Exhibit D-6).

Applicant's Rebuttal:

Dr. Penrose responded to the Board regarding statements from the interested parties. Non-church groups meet in their facility and it has nothing to do with the testing facility. A staff member may come by to pick up testing kits in the evening. The new building will be designed for office use that is practical for the counseling and testing that they do.

Rev. Melinda Foster, 611 West 15th Street, Associate Pastor of Community of Hope, stated she is a former Rogers County Assessor. She checked with the Tulsa County Assessor's office and found that the property values in the Gracemont Addition all went up 5% this year, based on sales in the area. One of

the highest sales was the Richardson's property, at \$124,500.00. The Eichenberger's property value was not lowered this year.

Comments and Questions:

Board members made some suggestions, such as: the church should reconsider allowing late night meetings because of the gravel parking lot and disturbing the neighbors; examine the lighting for directing it down and away from the neighborhood. The neighbors need to contact the church about screening fences for their property and contact Neighborhood Inspections issues regarding non-compliance with the zoning code.

Board Action:

On **Motion** of **Stead**, the Board voted 3-0-0 (Dunham, Henke, Stead "aye"; no "nays"; no "abstentions"; Paddock, Stephens "absent") that the Board found no unauthorized activity in the manufactured building contrary to the relief granted in Case No. 19825; and **UPHOLDING** the **APPEAL** of the decision of the neighborhood inspector that unauthorized activity is occurring in manufactured building and is contrary to relief granted in case 19825

BEG SWC LT 1 BLK 4 GRACEMONT 2ND TH S164 .61 E610.81 N164.67 W610.90 POB SEC 15 19 13, GRACEMONT 2ND ADDN, GRACEMONT THIRD ADDN CONT, GRACEMONT THIRD ADDN CONT S/2 B7, LORTONDALE ADDN, City of Tulsa, Tulsa County, State of Oklahoma

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Case No. 20076

Action Requested:

Variance of the allowable signage in an IM zoned district from 634 square feet to 744 square feet to allow a new advertising sign (72 square feet) (Section 1221.E.3.a), located: 2807 North Garnett Road.

Presentation:

Mike Moydell, 1221 Charles Page Boulevard, stated there is no residential district in the area. They proposed to place a 6' x 12' sign, 20' ft. tall, 106 ft. from the centerline. He stated there is a large billboard on the property. He submitted photographs (Exhibit E-1).

Interested Parties:

There were no interested parties who wished to speak.

Board Action:

On **Motion** of **Stead**, the Board voted 3-0-0 (Dunham, Henke, Stead "aye"; no "nays"; no "abstentions"; Paddock, Stephens "absent") to **APPROVE Variance** of the allowable signage in an IM zoned district from 634 square feet to 744 square feet to allow a new advertising sign (72 square feet) (Section 1221.E.3.a) , finding extraordinary and exceptional conditions peculiar to the land do not apply generally

to other property in the same use district, and the literal enforcement of the code would result in an unnecessary hardship; and finding it will not cause substantial detriment to the public good or impair the purpose, spirit and intent of the code or Comprehensive Plan, on the following described property:

LT 1, BLK 1, AIRPARK DISTRIBUTION CENTER, RACEWAY ADDN, City of Tulsa, Tulsa County, State of Oklahoma

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Case No. 20077

Action Requested:

Verification of spacing requirements from another family day care home on the same street -- SECTION 402.B.5, located: 1158 North Frankfort Avenue East.

Presentation:

Jacqueline Williams, 1158 North Frankfort Avenue, presented to verify spacing for a family home day care.

Interested Parties:

There were no interested parties who wished to speak.

Board Action:

On **Motion** of **Henke**, the Board voted 3-0-0 (Dunham, Henke, Stead "aye"; no "nays"; no "abstentions"; Paddock, Stephens "absent") to **APPROVE** a **Verification** of spacing requirements from another family day care home on the same street -- SECTION 402.B.5, on the following described property:

E20 LT 46 & ALL LTS 47 & 48 & S7.5 VAC ALLEY ADJON N BLK 3, DOUGLAS PLACE ADDN, City of Tulsa, Tulsa County, State of Oklahoma

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Case No. 20086

Action Requested:

Minor special exception of the required 30 ft setback from the front property line to 29 ft 4 in. for the addition of an architectural feature to the proposed house, located: 3304 East 93rd Street.

Presentation:

Murry Fleming, 3505 East 100th Street, requested an eight-inch variance. He submitted a site plan (Exhibit F-1). He pointed out that the street was widened at the entrance to the subdivision. The west side of his lot is 20' shorter than the other side.

Comments and Questions:

Mr. Dunham noted that Harvard is on one side of the property and the drainage ditch on the other.

