AGENDA
CITY OF TULSA BOARD OF ADJUSTMENT
Regularly Scheduled Meeting
Tulsa City Council Chambers
175 East 2nd Street, 2nd Level, One Technology Center
Tuesday, March 14, 2017, 1:00 P.M.

Meeting No. 1179

CONSIDER, DISCUSS AND/OR TAKE ACTION ON:

1. Approval of **Minutes** of February 28, 2017 (Meeting No. 1178).

UNFINISHED BUSINESS

2. **22204—Jack Arnold**
Variance to reduce the street setback from 35 feet to 30 feet (Section 5.030, Table 5-3). **LOCATION:** 2641 East 65th Place South **(CD 2)**

NEW APPLICATIONS

3. **22202-Osage—Michael Jones**
Variance to permit the expansion of a non-conforming use (neon signage company) to allow a 1,092 square foot storage building on the site (Section 80.040). **LOCATION:** 915 North 33rd Avenue West **(CD 1)**

4. **20336-B—Tulsa County – Richard Bales**
Amendment of a previously approved site plan in BOA-20336-A to permit construction of athletic courts and a parking area. **LOCATION:** 5202 South Hudson Avenue East **(CD 9)**

5. **22209—Hall Estill – Hugh Long**
Special Exception for a temporary use as a storage and staging area for construction equipment and materials (Section 50.020-D). **LOCATION:** North of the NW/c of West 14th Street South and South Denver Avenue West **(CD 4)**

6. **22211—Josh Miller**
Variance of the required rear setback in the RS-3 District from 20 ft. to 5 ft (Section 5.030). **LOCATION:** 7705 South Xenophon Avenue **(CD 2)**

7. **22212—Joshua Ritchey**
Special Exception to permit low-impact manufacturing and industry (microbrewery) in the CH District (Section 15.020). **LOCATION:** 418 South Peoria Avenue East **(CD 4)**

OTHER BUSINESS

NEW BUSINESS

BOARD MEMBER COMMENTS

ADJOURNMENT

Website: www.cityoftulsa-boa.org **E-mail: esubmit@incog.org**

CD = Council District

NOTE: If you require special accommodation pursuant to the Americans with Disabilities Act, please notify INCOG (918)584-7526. Exhibits, Petitions, Pictures, etc., presented to the Board of Adjustment may be received and deposited in case files to be maintained at Land Development Services, INCOG. The ringing/sound on a cell phones and pagers must be turned off during the Board of Adjustment meeting.

NOTE: This agenda is for informational purposes only and is not an official posting. Please contact the INCOG Office at (918) 584-7526, if you require an official posted agenda.

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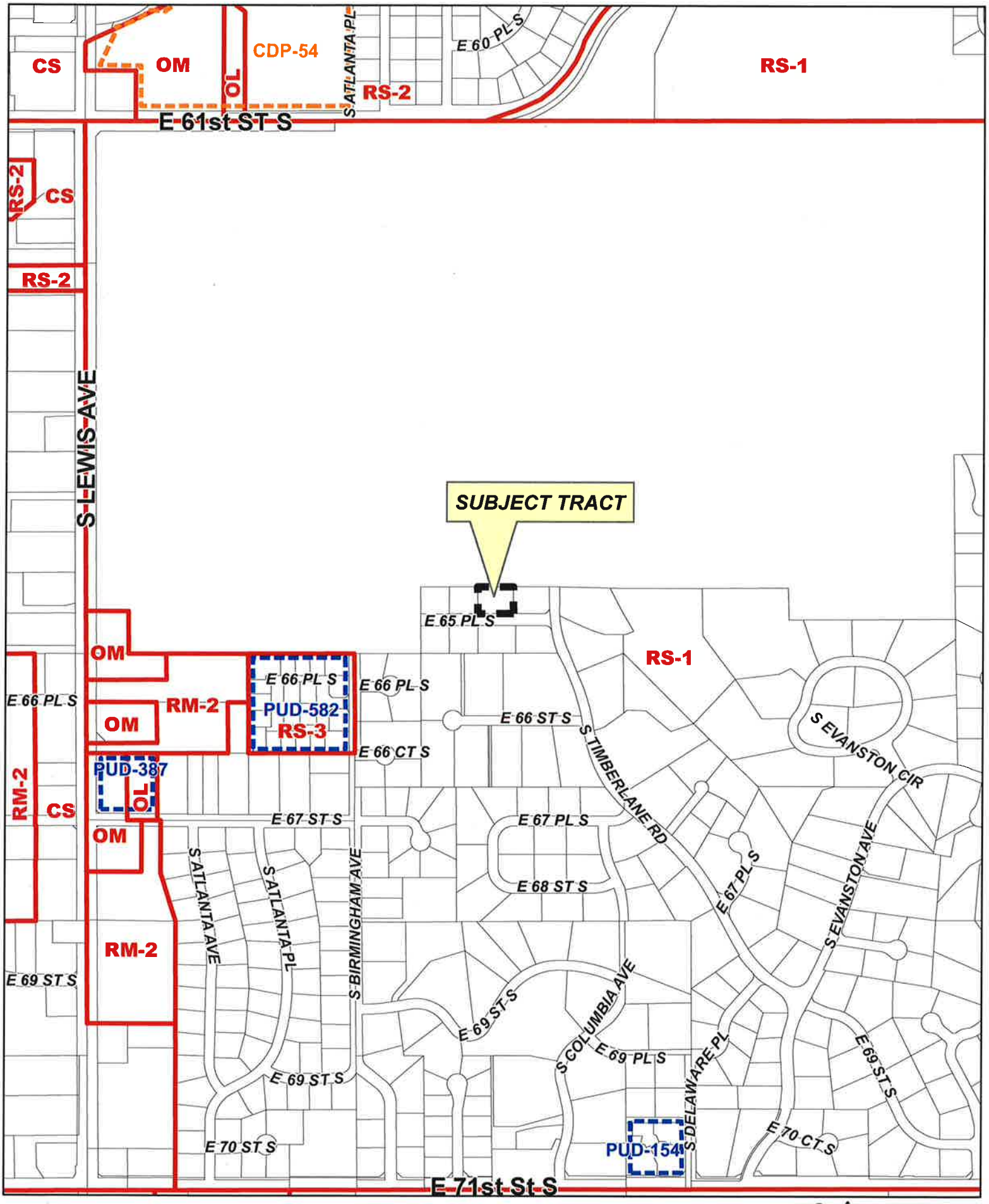

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BOA-22204

2.1

18-13 05

BOARD OF ADJUSTMENT
CASE REPORT

STR: 8305
CZM: 52
CD: 2
A-P#: n/a

Case Number: **BOA-22204**

HEARING DATE: 03/14/2017 1:00 PM

APPLICANT: Jack Arnold

ACTION REQUESTED: Variance to reduce the street setback from 35' to 30' in the RS-1 district (Section 5.030, Table 5-3).

LOCATION: 2641 E 65 PL S

ZONED: RS-1

PRESENT USE: Vacant Residential Lot

TRACT SIZE: 23,627.04 SQ FT

LEGAL DESCRIPTION: LOT-2-BLK-1, TIMBERLANE ROAD ESTATES, City of Tulsa, Tulsa County, State of Oklahoma

RELEVANT PREVIOUS ACTIONS:
None Relevant.

RELATIONSHIP TO THE COMPREHENSIVE PLAN: The Tulsa Comprehensive Plan identifies the subject property as part of an 'Existing Neighborhood' and an 'Area of Stability'.

An **Existing Neighborhood** is intended to preserve and enhance Tulsa's existing single family neighborhoods. Development activities in these areas should be limited to the rehabilitation, improvement or replacement of existing homes, and small-scale infill projects, as permitted through clear and objective setback, height, and other development standards of the zoning code.

The **Areas of Stability** include approximately 75% of the city's total parcels. Existing residential neighborhoods, where change is expected to be minimal, make up a large proportion of the Areas of Stability. The ideal for the Areas of Stability is to identify and maintain the valued character of an area while accommodating the rehabilitation, improvement or replacement of existing homes, and small scale infill projects. The concept of stability and growth is specifically designed to enhance the unique qualities of older neighborhoods that are looking for new ways to preserve their character and quality of life. The concept of stability and growth is specifically designed to enhance the unique qualities of older neighborhoods that are looking for new ways to preserve their character and quality of life.

ANALYSIS OF SURROUNDING AREA: The subject tract is abutted by RS-1 zoned residences on the south, east and west; the Southern Hills Country Club abuts the site on the north

STAFF COMMENTS:
Based on the submitted drawing it appears that the proposed house will establish a front yard setback of 30 ft. The RS-1 district requires a front yard setback of 35 ft. in an attempt to establish and preserve desired development intensity and development patterns within the district; therefore, the applicant has requested a variance to reduce the required front yard setback to 30 ft. The applicant provided the following statement with their application: *"The lot is on the north side of 65th Place and the topography from the southeast corner of the lot to the northwest corner has a drop in the elevation 24 ft. This makes it difficult to position a new residence on this lot."*

Staff has received a letter of protest for a neighboring property owner; the letter is attached for the Board review.

Sample Motion for a Variance

Move to _____ (approve/deny) a Variance to reduce the street setback from 35' to 30' in the RS-1 district (Section 5.030, Table 5-3).

- Finding the hardship(s) to be_____.
- Per the Conceptual Plan(s) shown on page(s) _____ of the agenda packet.
- Subject to the following conditions _____.

The Board finds that the following facts, favorable to the property owner, have been established:

"a. That the physical surroundings, shape, or topographical conditions of the subject property would result in unnecessary hardships or practical difficulties for the property owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;

b. That literal enforcement of the subject zoning code provision is not necessary to achieve the provision's intended purpose;

c. That the conditions leading to the need of the requested variance are unique to the subject property and not applicable, generally, to other property within the same zoning classification;

d. That the alleged practical difficulty or unnecessary hardship was not created or self-imposed by the current property owner;

e. That the variance to be granted is the minimum variance that will afford relief;

f. That the variance to be granted will not alter the essential character of the neighborhood in which the subject property is located, nor substantially or permanently impair use or development of adjacent property; and

g. That the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of this zoning code or the comprehensive plan."

Feet
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Subject Tract

BOA-22204

18-13 05

Note: Graphic overlays may not precisely align with physical features on the ground.

Aerial Photo Date: February 2016

N

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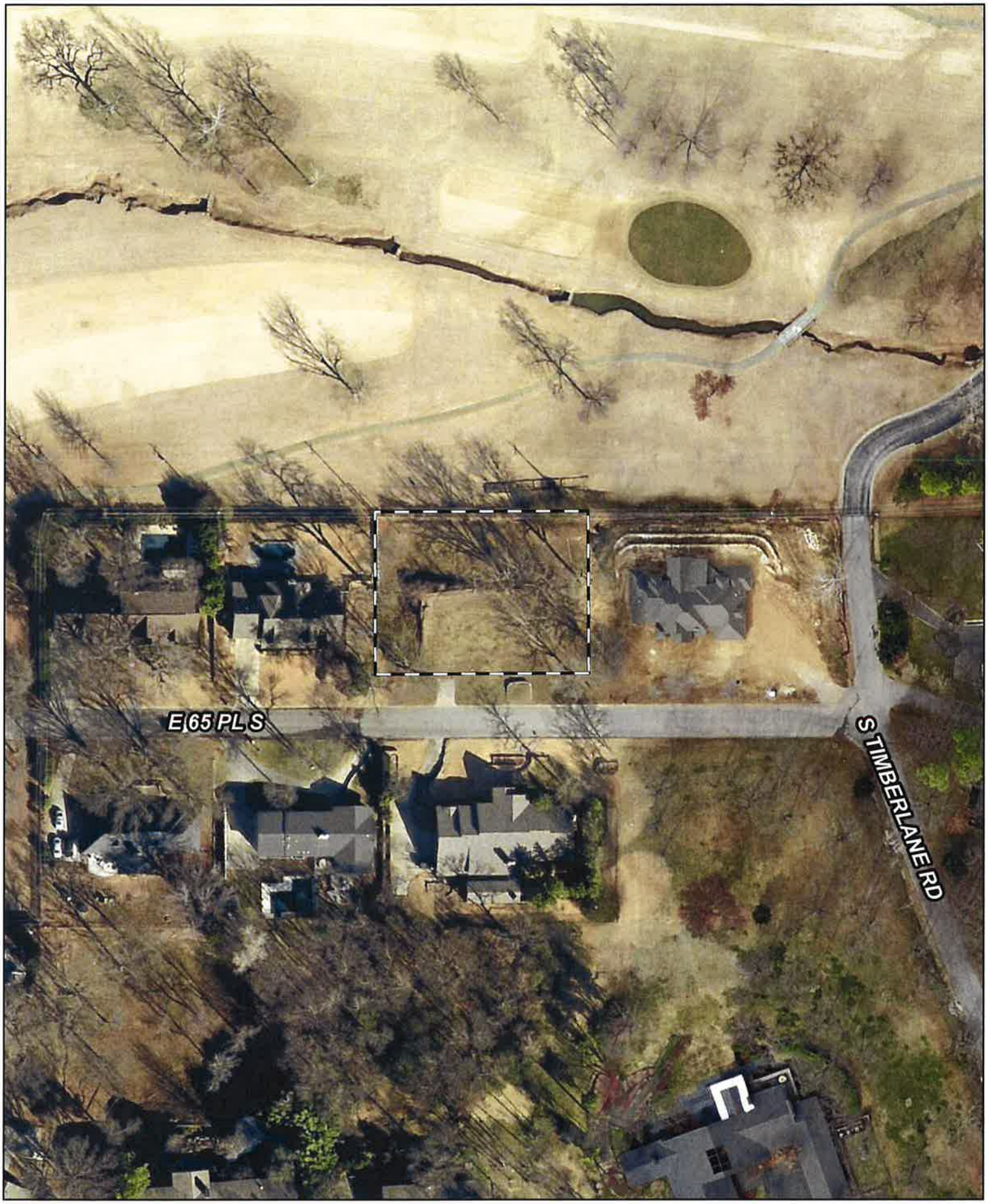

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Subject Tract

BOA-22204

18-13 05

Note: Graphic overlays may not precisely align with physical features on the ground.

Aerial Photo Date: February 2016

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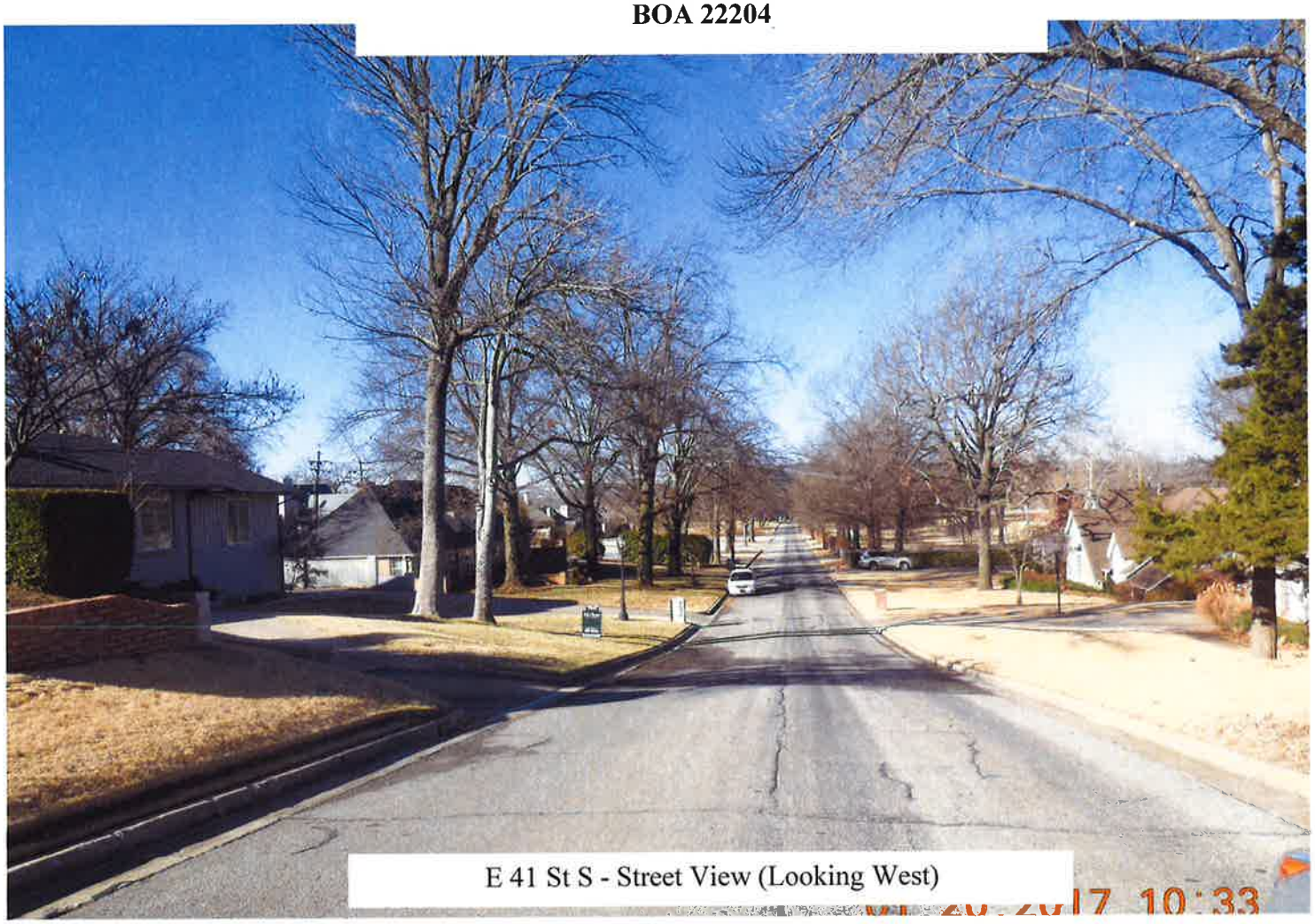
BOA 22204

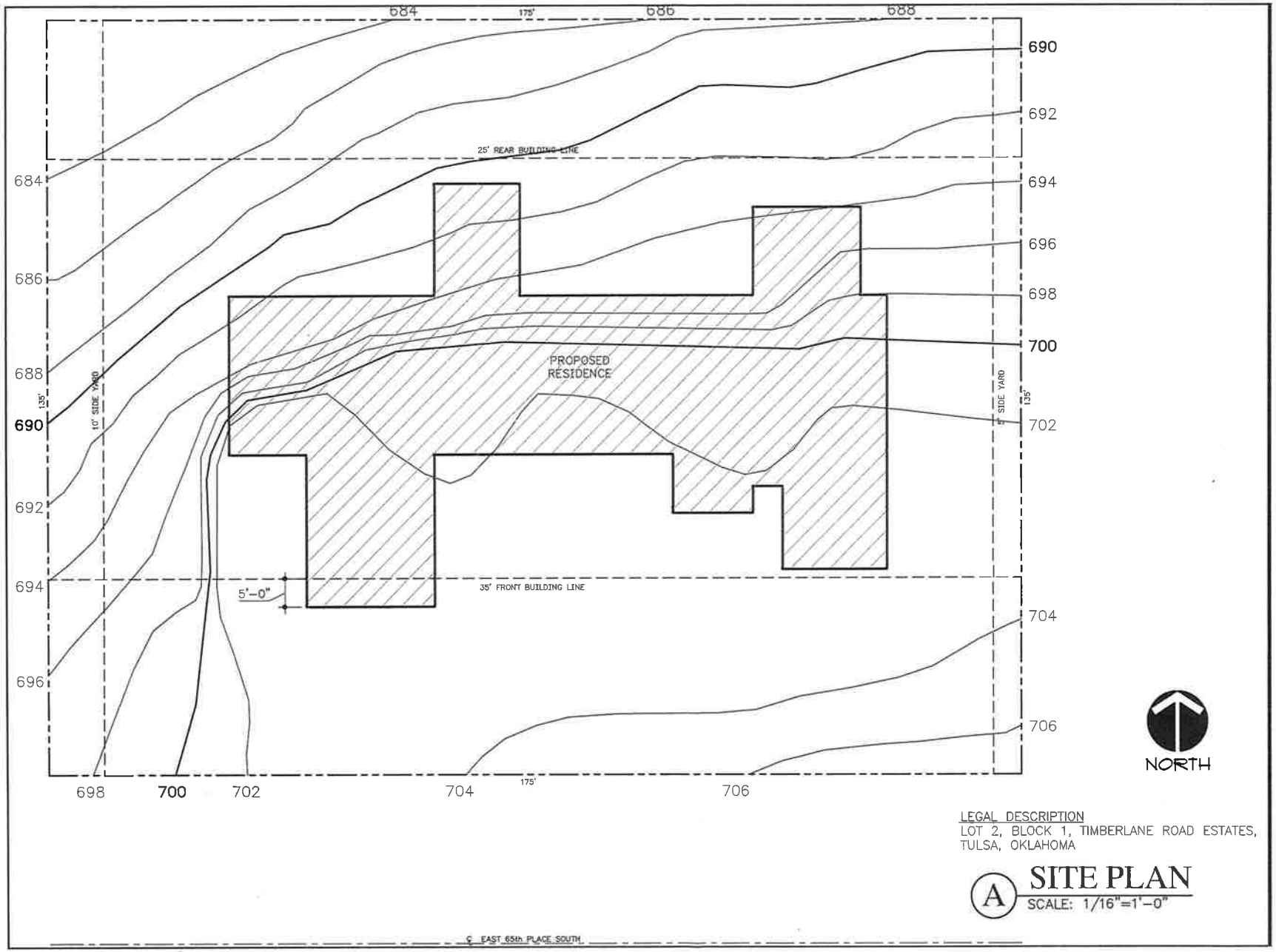
Subject Site- Looking North

E 41 St S - Street View (Looking East)

2.6



E 41 St S - Street View (Looking West)



LEGAL DESCRIPTION
LOT 2, BLOCK 1, TIMBERLANE ROAD ESTATES, TULSA, OKLAHOMA

A SITE PLAN
SCALE: 1/16"=1'-0"

JA

THE PURCHASER OF THESE PLANS IS HEREBY LICENSED TO CONSTRUCT ONE HOUSE FROM THESE PLANS. SHOULD DISTURBANCE IS THE OWNER OF THE HOUSE, DESIGN IS ILLUSTRATED IN THESE PLANS HAVE BEEN PROTECTED BY ITS RIGHTS TO THESE PLANS. THESE PLANS MAY NOT BE COPIED AGAIN, REPRODUCED, SOLD OR ASSIGNED TO A THIRD PARTY WITHOUT WRITTEN PERMISSION FROM JACK ARNOLD ENTERPRISES. THE PURCHASER OF THESE PLANS WILL BE RESPONSIBLE FOR OBTAINING ALL PERMITS, LICENSES, ZONING CLEARANCE, ETC. NECESSARY TO BUILD THE HOUSE WITH ANY AND ALL GOVERNING CODES, ORDINANCES, AND CONVENANTS HAVING JURISDICTION OVER THE SITE OF CONSTRUCTION AND SETTING-IN. ANY MODIFICATIONS NECESSARY TO MEET ACTUAL SITE CONDITIONS, FIELD CONDITIONS, OR TO COMPLY WITH LOCAL CODES, ORDINANCES, OR COVENANTS SHOULD BE SUCH CHANGES SHOULD BE CONSULTED B.E. PROFESSIONAL ENGINEER, ARCHITECT, BUILDING DESIGNER OR BUILDING CONTRACTOR. JACK ARNOLD ENTERPRISES HAS NO LIABILITY FOR ANY HOUSE CONSTRUCTED FROM THESE PLANS

CHECK SET

NOT FOR CONSTRUCTION

DATE: 1/12/2017
JOB NO.: 1613
DRAWN BY: KLK
REVISED:

ARCHITECTURAL RESOURCES by
JACK ARNOLD
7140 South Yale • Tulsa, Oklahoma 74136 • 1.918.494.2700 • www.jackarnold.com

Sheet:
SP1

8.8

Moye, Nikita

From: Shane Marchand [Shane.Marchand@hpidc.com]
Sent: Friday, February 03, 2017 6:02 PM
To: Moye, Nikita
Cc: Blake Johnson
Subject: Protest of Case Number BOA-22204

Ms. Moye

I have received the Notice of Hearing before the Board of Adjustment Case Number BOA-22204 in the mail. I live across the street from 2641 E. 65th Place S and I believe the granting of this variance will both negatively impact the beauty of our street and possibly hurt the value of homes. I therefore would like to protest this requested variance. I am unable to attend the hearing on Tuesday, February 14th and request that this date be rescheduled.

Best regards,

Shane Marchand

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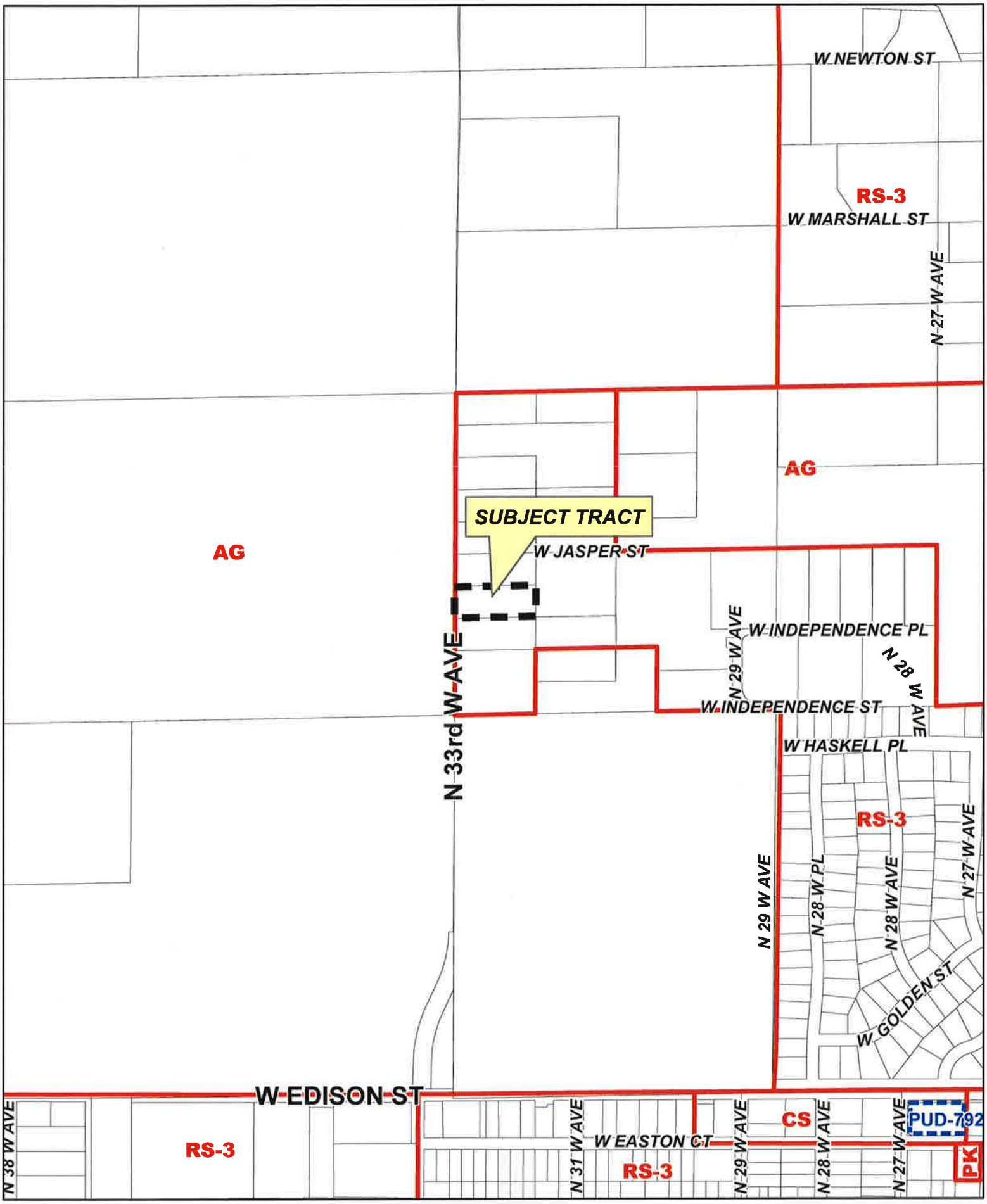

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BOA-22202

20-12 33

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BOARD OF ADJUSTMENT
CASE REPORT

STR: 9203
CZM: 36
CD: 1
A-P#: 398496

Case Number: **BOA-22202**

HEARING DATE: 03/14/2017 1:00 PM

APPLICANT: Michael Jones

ACTION REQUESTED: Variance to permit the expansion of a non-conforming use (neon signage company) to allow a 1092 square foot storage building on the site (Section 80.040).

LOCATION: 915 N 33 Ave W

ZONED: RS-3

PRESENT USE: Residential/Commercial

TRACT SIZE: 43,560 SQ FT

LEGAL DESCRIPTION:
N 132' OF S 528' OF W 330' OF SW/4 SW/4 NE/4, City of Tulsa, Osage County, State of Oklahoma

RELEVANT PREVIOUS ACTIONS:

Subject Lot:
BOA 20704; 06.24.08 the Board **dismissed** an Appeal of the determination of a zoning official to deny a permit for the addition of a structure to accommodate a business in the RS-3 district. Appeal was dismissed because the applicant failed to specify any error made in the decision on of the Administrative Official.

RELATIONSHIP TO THE COMPREHENSIVE PLAN: The Tulsa Comprehensive Plan identifies the subject property as part of an "Existing Neighborhood" and an "Area of Stability".

The **Existing Residential Neighborhood** category is intended to preserve and enhance Tulsa's existing single family neighborhoods. Development activities in these areas should be limited to the rehabilitation, improvement or replacement of existing homes, and small-scale infill projects, as permitted through clear and objective setback, height, and other development standards of the zoning code. In cooperation with the existing community, the city should make improvements to sidewalks, bicycle routes, and transit so residents can better access parks, schools, churches, and other civic amenities.

The **Areas of Stability** includes approximately 75% of the city's total parcels. Existing residential neighborhoods, where change is expected to be minimal, make up a large proportion of the Areas of Stability. The ideal for the Areas of Stability is to identify and maintain the valued character of an area while accommodating the rehabilitation, improvement or replacement of existing homes, and small scale infill projects. The concept of stability and growth is specifically designed to enhance the unique qualities of older neighborhoods that are looking for new ways to preserve their character and quality of life. The concept of stability and growth is specifically designed to enhance the unique qualities of older neighborhoods that are looking for new ways to preserve their character and quality of life.

ANALYSIS OF SURROUNDING AREA: The subject tract is abutted by RS-3 zoned residential on the north, east and south; and AG zoning on the west.

STAFF COMMENTS:
The commercial sign business on the RS-3 zoned subject lot is lawful non-conforming use on the site. The applicant has stated that in order to continue the "Osage Neon" sign business additional storage and work space is needed. The open length of the building and doors allow for a better work space for working on neon tubes for signs. The business needs to expand to remain competitive with similar businesses in the area.

The Code states that a nonconforming use of a portion of a building may be expanded or extended into the remaining portions of the building if the development administrator determines that the areas of the building in which the expansion is proposed were arranged and designed for the use. Nonconforming use may not be expanded or extended in any other way unless the expansion reduces or eliminates the nonconformity.

Addition of the 1092 SF detached accessory structure for the storage of sign materials and equipment is an expansion of the non-conforming use on the site which is not permitted. The applicant is seeking a Variance to permit a 1092 SF accessory storage building to be used in conjunction with the existing commercial sign business located on the site.

Sample Motion for a Variance

Move to _____ (approve/deny) a Variance to permit the expansion of a non-conforming use (neon signage company) to allow a 1092 square foot storage building on the site (Section 80.040).

- Finding the hardship(s) to be_____.
- Per the Conceptual Plan(s) shown on page(s) _____ of the agenda packet.
- Subject to the following conditions _____.

The Board finds that the following facts, favorable to the property owner, have been established:

"a. That the physical surroundings, shape, or topographical conditions of the subject property would result in unnecessary hardships or practical difficulties for the property owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;

b. That literal enforcement of the subject zoning code provision is not necessary to achieve the provision's intended purpose;

c. That the conditions leading to the need of the requested variance are unique to the subject property and not applicable, generally, to other property within the same zoning classification;

d. That the alleged practical difficulty or unnecessary hardship was not created or self-imposed by the current property owner;

e. That the variance to be granted is the minimum variance that will afford relief;

f. That the variance to be granted will not alter the essential character of the neighborhood in which the subject property is located, nor substantially or permanently impair use or development of adjacent property; and

g. That the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of this zoning code or the comprehensive plan."

Board Action:

On **Motion** of **White**, the Board voted 5-0-0 (White, Henke Stephens, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **ACCEPT** a Verification of the spacing requirement for an outdoor advertising sign of 1,200 ft. from another outdoor advertising sign on the same side of the highway (Section 1221.F.2), based upon the facts in this matter as they presently exist, subject to the action of the Board being void should another outdoor advertising sign be constructed prior to this sign, with the condition that the existing Whistler sign in the immediate vicinity of the new sign, be removed prior to constructing the new sign, on the following described property:

LT1 LESS BEG 596.90 E 249.64 N & 63.49 NELY SWC SEC 31 20 14 TH NELY 77.35 E 435.51 CRV RT 933.65 E 20.78 SE 306.21 NW 155.14 NW 68.09 CRV LF 76.83 W 46 .22 CRV RT 80.98 NW 196.05 CRV LF 92.95 W 27.22 CRV RT 110.61 NW 29.54 CRV LF 269.35 SW 89.74 W 259.27 N 66.50 WLY 109.51 POB & LESS 120 W 120 BLK1, CROSSTOWN CENTER RESUB PRT VAN ESTATES NO 2 AMD, City of Tulsa, Tulsa County, State of Oklahoma

****

Case No. 20704

Action Requested:

Appeal the determination of the zoning official denying the permit for the addition of a structure to accommodate a business in the RS-3 district, located: 915 North 33rd West Avenue.

FILE COPY

Presentation:

Harold Hawkins, 915 North 33rd West Avenue, Tulsa, Oklahoma, gave an opening statement. In summary he stated the buildings were constructed in the 1960's and the needs to improve the property and comply with the zoning code, suggesting it would improve the character of the property. Materials and machinery would be stored out of sight. He indicated that a restriction on his use rights should not be imposed if it does not bear a substantial relation to public health, safety, morals or general welfare. He asked for consideration of his extraordinary situation that his proposal is in keeping with spirit and intent of the Comprehensive Plan. The physical nature of the neighborhood and surrounding property has not change since this home was built and the business was established, which is over forty years. There are no new homes or housing developments in over forty years.

Comments and Questions:

Mr. Henke asked if the applicant filed the appeal with the City Clerk and Administrative Official and stated the reason for the appeal. Mr. Hawkins replied that he did. He did not have a copy of the appeal to the Board. Mr. Henke could not find that a reason for the appeal was given at the time of filing. He asked Mr. Ackermann for assistance. Mr. Ackermann replied that the notice of appeal is required to be filed within ten days of the decision of the Administrative Official and

the notice shall specify the grounds for the appeal. He stated that the notice of the appeal appears not to specify the grounds for the appeal. This means the notice does not appear to be perfected and at this time the Board would not have jurisdiction to hear the case. Mr. Cuthbertson stated this notice of appeal was filed April 9, 2008, the application officially establishing the appeal to the Board was made on May 2, 2008. There was no justification or support for the appeal in the application. Mr. Cuthbertson stated he received correspondence from the appellant around May 28, 2008 that gave justification and support for the appeal.

Board Action:

FILE COPY

On **Motion** of **White**, the Board voted 5-0-0 (White, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **DISMISS** the Appeal for lack of jurisdiction, on the following described property:

N 132 of the S 528 of the W 330 of the SW/4 of the SW/4 of the NE/4 Section 33, T-20-N, R-12-E, City of Tulsa, Osage County, State of Oklahoma

Mr. Alberty stated that in this situation where there was a non-conforming use that can continue as long as it is not changed. When he changed it by expanding it, the Inspector was correct in his decision, according to the code. Mr. Ackermann pointed out that the instruction for appealing the Administrative Official's decision was on the deficiency letter that the applicant received.

****

Case No. 20705

Action Requested:

Site plan approval for an approved industrial use in a CG district, located: 65 North Mingo Road East.

Presentation:

Gale Plummer, stated he requested approval of this application. A site plan was provided (Exhibit D-1).

Comments and Questions:

Mr. Plummer was informed that a sidewalk would be required on this site plan only; as well as, no outside storage of material, all manufacturing inside the building, and all parking and driving surfaces asphalt or concrete.

Interested Parties:

There were no interested parties who wished to speak.

Board Action:

On **Motion** of **Stead**, the Board voted 5-0-0 (White, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a Site plan approval for an approved industrial use in a CG district, per site plan as

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

DISTRICT COURT
FILED
MAR 24 2010
SALLY HOWE SMITH, COURT CLERK
STATE OF OKLAHOMA, TULSA COUNTY

In the Matter of the Appeal of **HAROLD CRAIG HAWKINS** from a Decision of the **BOARD OF ADJUSTMENT OF THE CITY OF TULSA, OKLAHOMA**, in Board of Adjustment Case Number 20704 **DISMISSING** the Appeal for Lack of Jurisdiction.	)	Case No. CJ-2008-6328 **Judge Rebecca Brett Nightingale**

FINAL JOURNAL ENTRY OF JUDGMENT

This matter came before this Court on February 22, 2010 for a non-jury trial *de novo* from an appeal taken by Mr. Harold Craig Hawkins (Hawkins) from a decision of the Board of Adjustment of the City of Tulsa (Board) dismissing his appeal to that Board from the determination of an administrative official. The Plaintiff in trial *de novo*, Mr. Hawkins, represented himself *pro se* and the Defendant in trial *de novo*, the City of Tulsa (City), *ex rel*, the Board of Adjustment of the City of Tulsa, was represented by Sr. Assistant City Attorney Patrick Boulden. Upon consideration of the evidence admitted by stipulation of the parties and the argument and authority presented, this Court enters the following findings, conclusions and final journal entry of judgment:

1. This matter is before this Court pursuant to Hawkins' filing of a Notice of Appeal with the Clerk of the Board and the City Clerk of the City of Tulsa, Oklahoma, on Wednesday, July 2, 2008.

2. Hawkins has appealed an action of the Board taken on Tuesday, June 24, 2008, in Board of Adjustment Case Number 20704, in which the Board denied his appeal of a Zoning Official's determination, finding that it had no jurisdiction to hear the matter because Hawkins' Notice of Appeal to the Board failed to specify the grounds for appeal, as required by 11 O.S.2001, §44-109(1) and Title 42 Tulsa Revised Ordinances, Section 1605.B.

3.7

3. A board of adjustment has jurisdiction to hear appeals from any order, requirement, decision or determination made by an administrative official in the enforcement of any zoning ordinance. 11 O.S.2001 §44-104(1) and 42 Tulsa Revised Ordinances §1605.

4. A municipality must provide by ordinance procedures whereby applicants can seek relief from its board of adjustment. 11 O.S.2001, §44-109.

5. Once a board of adjustment renders a decision, any person aggrieved, any taxpayer or any municipal official may appeal any action, decision, ruling, judgment or order of a board of adjustment to the district court of the county in which the municipality is situated. 11 O.S.2001, §44-110.

6. Before a district court, an appeal is heard and tried *de novo* and the court may reverse or affirm, in whole or in part, or modify, the decision brought up for review. 11 O.S.2001, §44-110(F).

7. When a board of adjustment decision is appealed to the district court, the scope of inquiry is the same as that at the board level. *City of Oklahoma City v. Harris*, 1941 OK 331, 126 P2.d 988, &15; *Board of Adjustment of Oklahoma City v. Shanbour*, 1967 OK 189, 435 P.2d 569, &13.

8. When an appeal is taken from a board of adjustment, it must be initiated by filing a notice with the municipal clerk and the clerk of the board of adjustment. Such a notice must specify the grounds for the appeal and must be filed within the time limits fixed by ordinance. 11 O.S.2001, §44-110.

9. On March 1, 2008, Hawkins submitted an application seeking a building permit to construct an accessory storage building to be used in conjunction with his existing commercial sign business located at 915 North 33rd West Avenue (the Property).

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10. The use of the Property as a commercial sign business is lawfully nonconforming because, although the property is zoned for residential single-family dwelling use (RS-3), the business was already located on the site when it was annexed into the City.

11. On April 24, 2008, Mr. Dustin Wright, then a City Zoning Official/Plans Examiner, issued a Letter of Deficiency (LOD) to Hawkins, notifying him that, although the Tulsa Zoning Code permits the use of his property to continue as a nonconforming commercial sign company, allowing the nonconforming use to be enlarged or extended, except to a use permitted in an RS-3 zoned district, would be a violation of the Tulsa Zoning Code. Accordingly, Mr. Wright LOD denied Hawkins a Zoning Clearance Permit.

12. On Friday, May 2, 2008, Hawkins delivered a notice (Notice), purporting to appeal the decision of Dustin Wright to the secretary for the Board of Adjustment and to Mr. Wright. Hawkins attached to that Notice Mr. Wright's LOD denying him a Zoning Clearance Permit.

13. The Notice Hawkins provided reflected that it was an appeal from the "Decision by Dustin Wright" and referenced a "Notice Zoning Clearance Application Denied (attached herewith)". Attached to the Notice was the LOD from Mr. Wright to Mr. Hawkins dated April 24, 2010. With this Notice, Hawkins also filed a Board of Adjustment appeal form which was filled in by hand and signed by Hawkins. In the blank area of the Board's appeal form, titled "ACTION(S) REQUESTED", was the handwritten statement: "Appealing an Administrative official."

14. At a hearing before the Board on June 24, 2008, in Board of Adjustment Case Number 20704, the Board denied Hawkins' appeal of a Zoning Official's determination, finding that it had no jurisdiction to hear the matter because Hawkins' Notice to the Board failed to

specify the "grounds" for appeal as required by 11 O.S.2001, §44-109(1) and Title 42 Tulsa Revised Ordinances, Section 1605.B. From this decision, Hawkins appealed to this Court.

15. Hawkins' position before this Court is that, taken together, both the typed Notice provided by him, containing the decision of Dustin Wright, and the Board of Adjustment appeal form sufficiently apprised the Board of what was being appealed.

16. Title 42, Tulsa Revised Ordinances, Section 1605 provides, in pertinent part, as follows:

> **SECTION 1605. APPEALS FROM AN ADMINISTRATIVE OFFICIAL**
>
> A. **General**. An appeal to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board or bureaus of the city affected, where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this Code.
>
> B. **Notice of Appeal**. An appeal shall be taken within 10 days from the determination complained of <u>by filing with the appropriate administrative official and with the Clerk of the Board, a notice of appeal, specifying the grounds thereof</u>. The administrative official, upon receipt of notice, shall forthwith transmit to the Clerk of the Board, certified copies of all the papers constituting the record of said matter. Upon receipt of the record the Clerk shall set the matter for public hearing. (Underlined emphasis added.)
>
> * * *

17. State statutes regulating appeals to a board of adjustment provides, in pertinent part, as follows:

> **Section 44-109 - Procedure for Appeals to the Board of Adjustment.**
>
> The municipal governing body shall provide by ordinance for appeals from any action or decision of an administrative officer acting pursuant to any zoning ordinance to the board of adjustment in the following manner:
>
> I. Appeals from the action of any administrative officer to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the administrative officer;

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> 2. An appeal shall be taken within the time limits as fixed by municipal ordinance by filing with the officer from whom the appeal is taken and by filing with the board of adjustment a notice of appeal specifying the grounds therefor. The officer from whom the appeal is taken shall forthwith transmit to the board of adjustment certified copies of all the papers constituting the record of the matter, together with a copy of the ruling or order from which the appeal is taken; * * * (Underlined emphasis added.)

18. In *Hargrave v. Tulsa Board of Adjustment*, 2002 OK 73, 55 P.3d 1088, ¶15; 55 P.3d 1088, 1093, the court wrote,

> ¶15 We hold the statutory requirements set out in 11 O.S.2001 §44-110 for perfecting an appeal from a decision of a municipal board of adjustment are mandatory. Failure to file a **proper notice** of appeal with the board of adjustment and with the municipal clerk within the time limit fixed by ordinance is fatal. If a **proper notice** of appeal is timely filed with both the board of adjustment and the municipal clerk, the district court obtains jurisdiction over the appeal when the board of adjustment, pursuant to notice of appeal, transmits to the district court clerk the original or certified copies of all papers constituting the record in the proceedings before the board of adjustment. (Bold and Underlined emphasis added.)

19. The appeal before this Court differs from the one considered by the court in *Hargrave*, in that the defect asserted by the City in Hawkins' appeal occurred while Hawkins was attempting to exhaust his administrative remedies pursuant to requirements established conjointly by 11 O.S.2001, §44-109 and 42 Tulsa Revised Ordinances, Section 1605.B. In *Hargrave*, the faulty appeal was to the district court, not an appeal to the Board of Adjustment, as is the case here. The particular defect asserted by the City here is that Hawkins' filing with the Board did not specify any grounds for the appeal, as required by 11 O.S.2001, §44-109 and 42 Tulsa Revised Ordinances, Section 1605.B and therefore was not a "proper notice".

20. While the dismissal of an appeal to an administrative board for the failure to "specify grounds" has not yet been addressed by Oklahoma's courts, other state courts have.

A. In Pennsylvania, that state's Commonwealth Court reviewed a lower court's dismissal of an appeal from the Zoning Hearing Board of Upper Milford Township. In

3.11

Pennsylvania, state statutes required that a notice of appeal set forth "the grounds on which the appellant relies." *Gall v. Zoning Hearing Board of Upper Milford Township*, 723 A.2d 758, 759, citing 53 P.S. Section 1003 A(a), the Pennsylvania Municipalities Planning Code. Upon affirming the dismissal by the zoning board, that court wrote: "It is well settled that failure to include the grounds for appeal in the land use appeal notice warrants dismissal of the appeal. See *Gall* supra., citing *Kreitz v. Zoning Board of Adjustment of City of Easton*, 4 Pa.Cmwlth, 602, 287 A.2d 884 (1972). (See also *Town of Derry v. Diorio*, 113 N.H. 375, 308 A.2d 523, where statutes require an appeal to specify the grounds upon which the appeal was claimed and failing to do so made the board of adjustment decision binding.)

B. In *State ex rel. Russell v. Board of Appeals of Village of Prairie Du Sac* 27 N.W.2d 378, (Wis.1947), an ordinance governing an appeal from a building inspector to the village's Board of Appeals provided that the "appellant shall file with the Building Inspector <u>and</u> with the Board of Appeals a notice of appeal, <u>specifying the grounds thereof</u>." (Underlined emphasis added.) However, the notice filed by the appellant did not specify any grounds for appeal. It merely requested "consideration" by the board. Upon denying the appellant's right to appeal, the court ruled,

> There is an indication in the trial court's decision that all the parties concerned in this case knew the reason for Curtis' appeal even though it was not stated and that therefore the defect in his appeal should not stand in his way. Although it may be true that in this particular case there was such general knowledge of the reason for the appeal, this court cannot in effect change legislation which requires a written notice of appeal specifying the grounds thereof.
>
> While not literally in point so far as the facts are concerned, the following case presents the general rule in an opinion by Chief Justice Kephart, *Colteryahn Sanitary Dairy v. Milk Control Comm.*, 1938, 332 Pa. 15, 1 A.2d 775, 779, 122 A.L.R. 1049 at page 1056: 'The form of the petition for appeal to the court below in these cases has also been called to our attention. The law requires that the petitioner shall state facts in support of his objections sufficient to constitute a *prima facie* case. Since this was not done in the present cases, the omission

3.12

> would be fatal to the proceedings. It is well settled, * * * that where statutory remedies are provided, the procedure prescribed by the statute must be strictly pursued, to the exclusion of other methods of redress. * * * This is particularly true of special statutory appeals from the action of administrative bodies.'
>
> Inasmuch as the matter was not properly before the Board of Appeals, the broad powers given to that board by section 7 of Article IX of ordinance 12.17 cannot be invoked. Neither can we here consider the merits of the case: whether Curtis had acquired a sufficient vested interest to permit the issuance of a permit in spite of the amendment of the zoning ordinance changing the nature of the district in which his property was located.

State ex rel. Russell v. Board of Appeals of Village of Prairie Du Sac 27 N.W.2d 378, 379, (Wis.1947).

21. The specification of grounds for any appeal to the Tulsa Board of Adjustment from the decision and determination made by the City's Zoning Official/Plans Examiner, imposed by 11 O.S.2001, §44-109 and Title 42 Tulsa Revised Ordinances, Section 1605.B is mandatory.

22. Hawkins' failure to file a proper notice of appeal, specifying the grounds thereof was jurisdictional for any appeal to the Tulsa Board of Adjustment and bars any further right of review by the district court.

NOW THEREFORE, this Court finds that the notice of appeal and accompanying documents filed by Hawkins failed to invoke the jurisdiction of the Board of Adjustment of the City of Tulsa to hear his appeal, because it failed to specify any error made in the decision of the administrative official, Mr. Dustin Wright, as grounds for his appeal. Consequently, the appeal lodged by Mr. Hawkins from the Board of Adjustment to this Court fails in a trial *de novo* for failing to invoke the jurisdiction of this Court. Accordingly the appeal of Mr. Hawkins to this Court should be and is hereby **DISMISSED. SUCH IS THE FINAL JUDGMENT AND ORDER OF THIS COURT.**

Dated this 23 day of March 2010.

Rebecca Brett Nightingale

District Judge Rebecca Brett Nightingale

APPROVED:

Mr. Harold Craig Hawkins, *Pro se*
915 North 33rd West Avenue
Tulsa, Oklahoma 74127-5003
Telephone: (918) 583-4430
E-mail: osageneon@cox.net

PRO SE* APPELLANT/PLAINTIFF IN TRIAL *DE NOVO

Mr. Patrick T. Boulden, OBA No. 10210
Sr. Assistant City Attorney
Tulsa City Attorney's Office
175 East Second Street, Suite 685
Tulsa, Oklahoma 74103-3203
Telephone: (918) 596-7717
Facsimile: (918) 596-9700
E-mail: pboulden@cityoftulsa.org

FOR THE CITY OF TULSA, OKLAHOMA,
***EX REL.* BOARD OF ADJUSTMENT OF THE CITY OF TULSA**
APPELLEE/DEFENDANT IN TRIAL *DE NOVO*

I, Sally Howe Smith, Court Clerk, for Tulsa County, Oklahoma, hereby certify that the foregoing is a true, correct and full copy of the instrument herewith set out as appears on record in the Court Clerk's Office of Tulsa County, Oklahoma, this

MAR 24 2010

By _____ Deputy

3.14

Feet
0 250 500

Subject Tract

BOA-22202

20-12 33

Note: Graphic overlays may not precisely align with physical features on the ground.

Aerial Photo Date: February 2016

N

3.15

Feet
0 50 100

Subject Tract

BOA-22202

20-12 33

Note: Graphic overlays may not precisely align with physical features on the ground.

Aerial Photo Date: February 2016

3.16

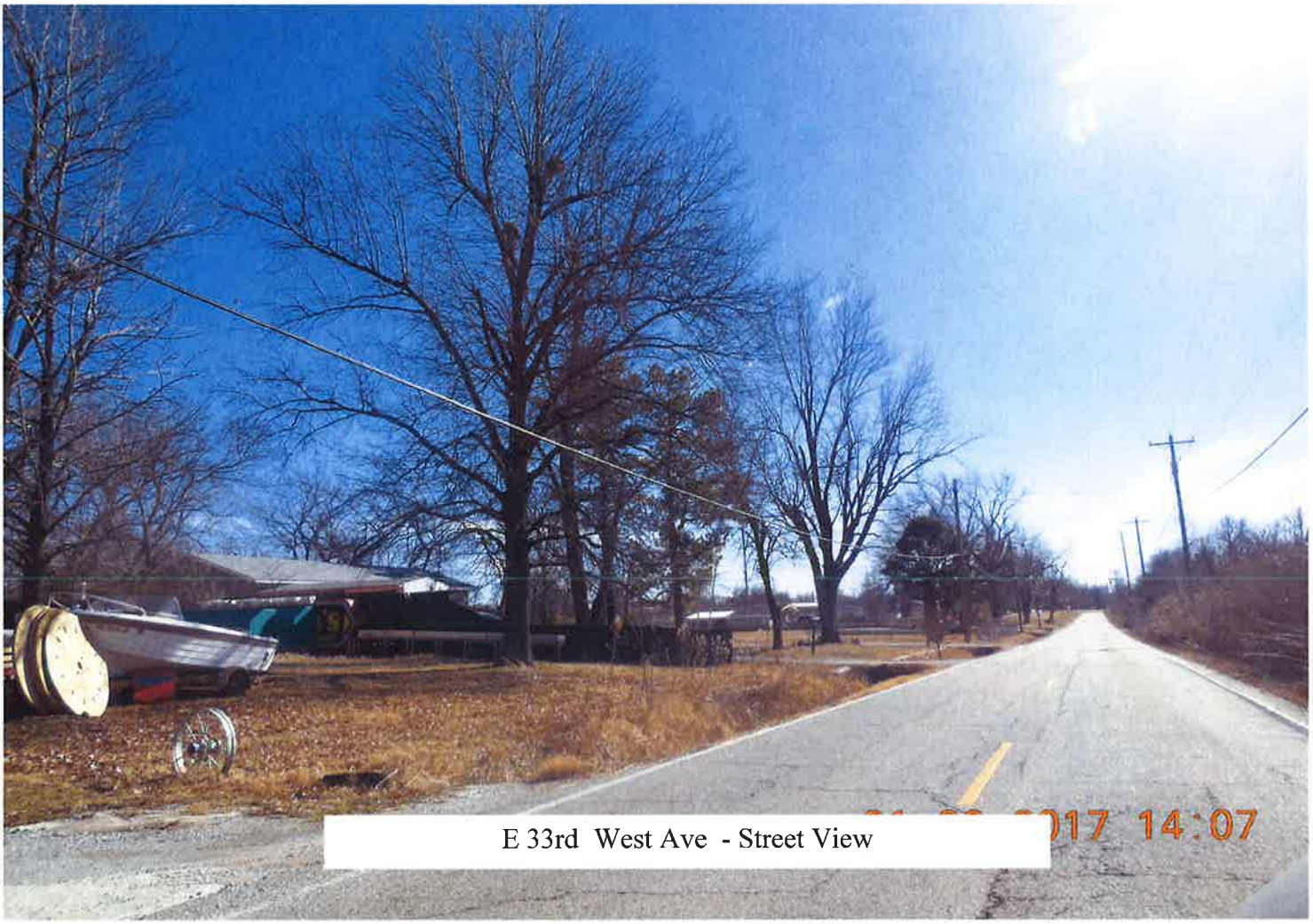
N

Subject Site- Looking East

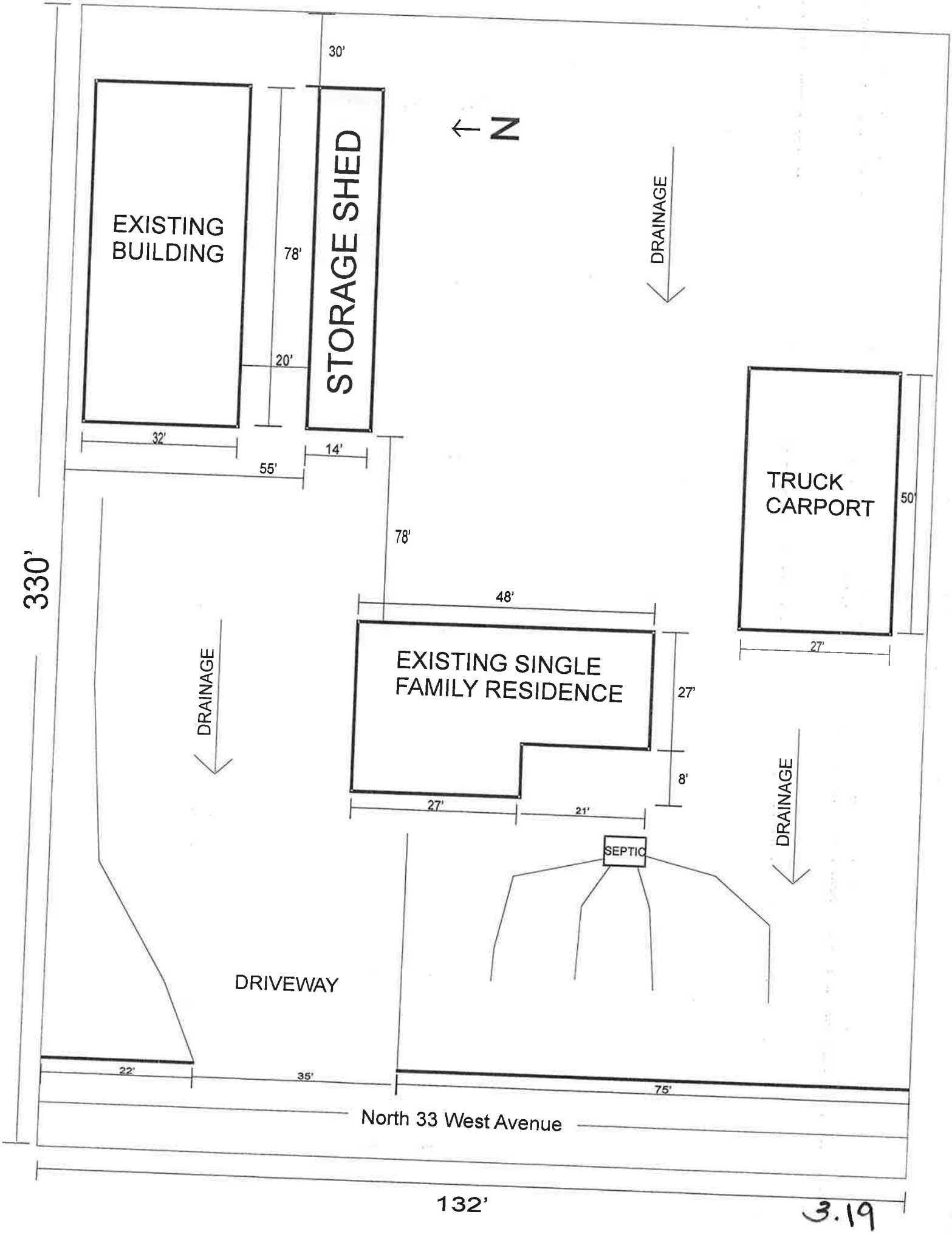
2017 14:07

Subject Site- Looking East

3.17



E 33rd West Ave - Street View


30'
EXISTING BUILDING
78'
STORAGE SHED
← N
DRAINAGE
20'
32'
14'
55'
TRUCK CARPORT
50'
78'
330'
48'
EXISTING SINGLE FAMILY RESIDENCE
27'
27'
DRAINAGE
8'
27'
21'
DRAINAGE
SEPTIC
DRIVEWAY
22'
35'
75'
North 33 West Avenue
132'

3.19

BOB KOLIBAS
ZONING OFFICIAL
PLANS EXAMINER
TEL918-596-9664

DEVELOPMENT SERVICES

175 EAST 2nd STREET, SUITE 450
TULSA, OKLAHOMA 74103

ZONING CLEARANCE PLAN REVIEW

LOD Number: 950371-1

August 11, 2016

HAROLD HAWKINS
HOMEOWNER
915 N 33 AV W
TULSA, OK 74127

Phone: (918)583-4430

APPLICATION NO: **398496** *(PLEASE REFERENCE THIS NUMBER WHEN CONTACTING OUR OFFICE)*
Location: **915 N 033 AV W**
Description: **NEW**

INFORMATION ABOUT SUBMITTING REVISIONS

OUR REVIEW HAS IDENTIFIED THE FOLLOWING CODE OMISSIONS OR DEFICIENCIES IN THE PROJECT APPLICATION FORMS, DRAWINGS, AND/OR SPECIFICATIONS. THE DOCUMENTS SHALL BE REVISED TO COMPLY WITH THE REFERENCED CODE SECTIONS.

REVISIONS NEED TO INCLUDE THE FOLLOWING:

1. A COPY OF THIS DEFICIENCY LETTER
2. A WRITTEN RESPONSE AS TO HOW EACH REVIEW COMMENT HAS BEEN RESOLVED
3. THE COMPLETED REVISED/ADDITIONAL PLANS FORM (SEE ATTACHED)
4. BOARD OF ADJUSTMENT APPROVAL DOCUMENTS, IF RELEVANT

REVISIONS SHALL BE SUBMITTED DIRECTLY TO THE CITY OF TULSA PERMIT CENTER LOCATED AT 175 EAST 2nd STREET, SUITE 450, TULSA, OKLAHOMA 74103, PHONE (918) 596-9601.
THE CITY OF TULSA WILL ASSESS A RESUBMITTAL FEE. DO NOT SUBMIT REVISIONS TO THE PLANS EXAMINERS.

SUBMITTALS FAXED / EMAILED TO PLANS EXAMINERS WILL NOT BE ACCEPTED.

IMPORTANT INFORMATION

1. SUBMIT TWO (2) SETS [4 SETS IF HEALTH DEPARTMENT REVIEW IS REQUIRED] OF REVISED OR ADDITIONAL PLANS. REVISIONS SHALL BE IDENTIFIED WITH CLOUDS AND REVISION MARKS.

2. INFORMATION ABOUT ZONING CODE, INDIAN NATION COUNCIL OF GOVERNMENT (INCOG), BOARD OF ADJUSTMENT (BOA), AND TULSA METROPOLITAN AREA PLANNING COMMISSION (TMAPC) IS AVAILABLE ONLINE AT WWW.INCOG.ORG OR AT INCOG OFFICES AT 2 W. 2nd ST., 8th FLOOR, TULSA, OK, 74103, PHONE (918) 584-7526.

3. A COPY OF A "RECORD SEARCH" **[ ]IS** **[X]IS NOT** INCLUDED WITH THIS LETTER. PLEASE PRESENT THE "RECORD SEARCH" ALONG WITH THIS LETTER TO INCOG STAFF AT TIME OF APPLYING FOR BOARD OF ADJUSTMENT ACTION AT INCOG. UPON APPROVAL BY THE BOARD OF ADJUSTMENT, INCOG STAFF WILL PROVIDE THE APPROVAL DOCUMENTS TO YOU FOR IMMEDIATE SUBMITTAL TO OUR OFFICE. (See revisions submittal procedure above.).

(continued)

REVIEW COMMENTS

SECTIONS REFERENCED BELOW ARE FROM THE CITY OF TULSA ZONING CODE TITLE 42 AND CAN BE VIEWED AT WWW.CITYOFTULSA-BOA.ORG

Application No. 398496 915 N 033 AV W July 15, 2016

Note: As provided for in Section 70.130 you may request the Board of Adjustment to grant a variance from the terms of the Zoning Code requirements identified in the letter of deficiency below. Please direct all questions concerning variances, special exceptions, appeals of an administrative official decision, Master Plan Developments Districts (MPD), Planned Unit Developments (PUD), Corridor (CO) zoned districts, zoning changes, platting, lot splits, lot combinations, alternative compliance landscape and screening plans and all questions regarding (BOA) or (TMAPC) application forms and fees to an INCOG representative at 584-7526. It is your responsibility to submit to our offices documentation of any appeal decisions by an authorized decision making body affecting the status of your application so we may continue to process your application. INCOG does not act as your legal or responsible agent in submitting documents to the City of Tulsa on your behalf.
Staff review comments may sometimes identify compliance methods as provided in the Tulsa Zoning Code. The permit applicant is responsible for exploring all or any options available to address the noncompliance and submit the selected compliance option for review. Staff review makes neither representation nor recommendation as to any optimal method of code solution for the project.

80.040-C Expansion of Use
A nonconforming use of a portion of a building may be expanded or extended into the remaining portions of the building if the development administrator determines that the areas of the building in which the expansion is proposed were manifestly arranged and designed for the use. Nonconforming use may not be expanded or extended in any other way unless the expansion reduces or eliminates the nonconformity.

Review comments: The proposed detached accessory structure for the storage of sign materials is an expansion of a non-conforming use which is not permitted. You may pursue a variance from the BOA to permit the expansion of a non-conforming use for a 1092 square foot storage building.

This letter of deficiencies covers Zoning plan review items only. You may receive additional letters from other disciplines such as Building or Water/Sewer/Drainage for items not addressed in this letter.

A hard copy of this letter is available upon request by the applicant.

END – ZONING CODE REVIEW

NOTE: THIS CONSTITUTES A PLAN REVIEW TO DATE IN RESPONSE TO THE SUBMITTED INFORMATION ASSOCIATED WITH THE ABOVE REFERENCED APPLICATION. ADDITIONAL ISSUES MAY DEVELOP WHEN THE REVIEW CONTINUES UPON RECEIPT OF ADDITIONAL INFORMATION REQUESTED IN THIS LETTER OR UPON ADDITIONAL SUBMITTAL FROM THE APPLICANT.

KEEP OUR OFFICE ADVISED OF ANY ACTION BY THE CITY OF TULSA BOARD OF ADJUSTMENT OR TULSA METROPOLITAN AREA PLANNING COMMISSION AFFECTING THE STATUS OF YOUR APPLICATION FOR A ZONING CLEARANCE PERMIT.

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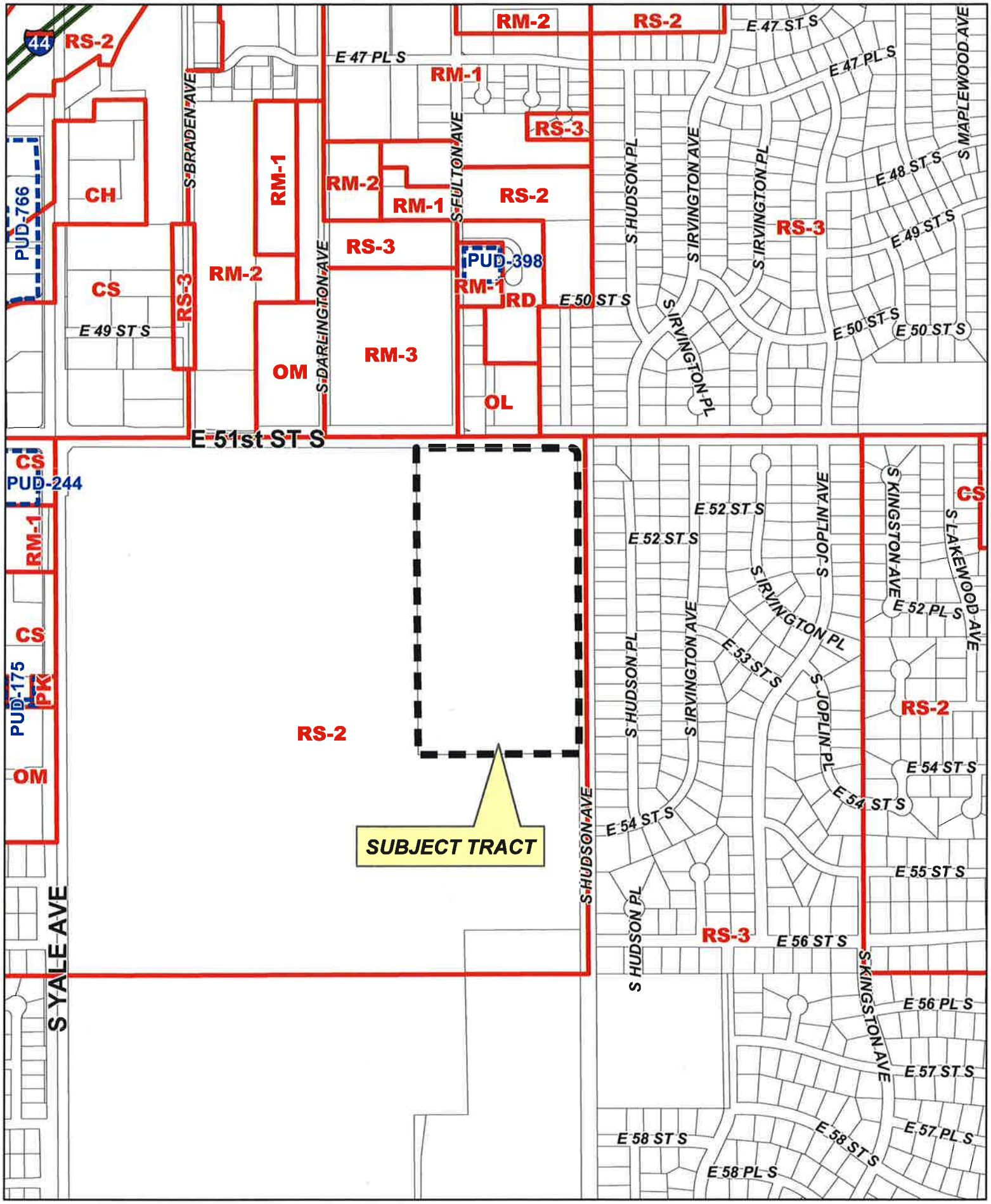


Feet
0 300 600

BOA-20366-B

19-13 34

4.1

N

BOARD OF ADJUSTMENT
CASE REPORT

STR: 9334
CZM: 48
CD: 9
A-P#: n/a

Case Number: **BOA-20336-B**

HEARING DATE: 03/14/2017 1:00 PM

APPLICANT: Richard Bales

ACTION REQUESTED: Amendment of a previously approved site plan in BOA 20336-A to permit construction of athletic courts and a parking area.

LOCATION: 5202 S HUDSON AV E

ZONED: RS-2

PRESENT USE: Athletic Facility / LaFortune Park

TRACT SIZE: 2.69 acres

LEGAL DESCRIPTION: W795 E875 S1475 N1525 NW LESS BEG 50S & 80W NEC NW TH S29.94 NWLY CRV LF 47.06 E29.94 POB SEC 34 19 13 26.916ACS, City of Tulsa, Tulsa County, State of Oklahoma

RELEVANT PREVIOUS ACTIONS:

Subject Property:
BOA 20336-A; on 06.24.16, the Board **approved** Variance of allowed building height from 35 feet to 42 feet (Section 403.A Table 3); and Modification to a previously approved Special Exception (BOA-20336) to permit construction of pro shop and enclosed athletic courts.

BOA-20336; on 9.12.06, the Board **approved** a Special Exception to permit a public library/community center in an RS-2 zoning district per plans submitted at the hearing.

RELATIONSHIP TO THE COMPREHENSIVE PLAN: The Tulsa Comprehensive Plan identifies the subject property as part of a "Park and Open Space" and an "Area of Stability".

Tulsa's park and open space are areas to be protected and promoted through the targeted investments, public private partnerships, and policy changes identified in the Parks, Trails, and Open Space chapter. Zoning and other enforcement mechanisms will assure that recommendations are implemented. No park and/or open space exists alone: they should be understood as forming a network, connected by green infrastructure, a transportation system, and a trail system. Parks and open space should be connected with nearby institutions, such as schools or hospitals, if possible.

The **Areas of Stability** include approximately 75% of the city's total parcels. Existing residential neighborhoods, where change is expected to be minimal, make up a large proportion of the Areas of Stability. The ideal for the Areas of Stability is to identify and maintain the valued character of an area while accommodating the rehabilitation, improvement or replacement of existing homes, and small scale infill projects. The concept of stability and growth is specifically designed to enhance the unique qualities of older neighborhoods that are looking for new ways to preserve their character and quality

of life. The concept of stability and growth is specifically designed to enhance the unique qualities of older neighborhoods that are looking for new ways to preserve their character and quality of life.

ANALYSIS OF SURROUNDING AREA: The subject tract is abutted to residential zoning on all sides with E 51st Street abutting the North property line. Across 51st Street to the North, there is OL, RS-3, and RM-3 zoning with a mix of uses.

STAFF COMMENTS:
A special exception was approved in case BOA-20336 to permit the existing library/community center; in BOA 20336-A the Board approved a variance and modification of the original site plan to permit the construction a pro shop and enclosed athletic courts. The public park currently contains public facilities including a golf course, library and a walking trail which is adjacent to Memorial High School.

As shown on the attached plans that applicant is proposing to construct outdoor and indoor tennis courts and a parking area west of the library/community center. When the Board approved the variance and site plan modification in BOA 20336-A it was approved per plan (see attached minutes). Therefore the applicant is required to present the proposed modification of the site plan to the Board for review and approval to allow the Board to ensure that the proposed modifications are keeping with the spirit and intent of the original approval.

Sample Motion for an Amendment

Move to _____ (approve/deny) an Amendment of the previously approved site plan in BOA 20336-A to permit construction of athletic courts and a parking area.

- Per the Conceptual Plan(s) shown on page(s) _____ of the agenda packet.
- Subject to the following conditions: _____.

The Board finds that the requested Amendment 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.

Ms. Snyder asked if some of the cars he purchases from the auction are going to placed inside the building. Mr. Harfoush answered affirmatively. He currently has two cars inside the building and he could place about 13 cars in the building.

Comments and Questions:
None.

Board Action:
On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request Special Exception to allow a used car sales office (Use Unit 17) in a CS District (Section 701, Table 1) for a period of five years from today's date of June 24, 2014. Finding the Special Exception will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; for the following property:

E19.66 W94.10 LT 37 & E20 W94.4 LT 38 LESS S15 FOR ST BLK 32, CLARLAND ACRES B20-37, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

20336-A—Sisemore Weisz & Associates – Darin Akerman

FILE COPY

Action Requested:
Variance of allowed building height from 35 feet to 42 feet (Section 403.A, Table 3); Modification to a previously approved Special Exception (BOA-20336) to permit construction of pro shop and enclosed athletic courts. **LOCATION:** SW/c of East 51st Street & South Hudson Avenue **(CD 9)**

Presentation:
Darin Akerman, 6111 East 32nd Place, Tulsa, OK; stated this is a request for a modification to a site plan for the tennis center in LaFortune Park. A portion of the tennis center building is beyond the 35 foot allowable height for an RS-2 residential district. There must be at least a 40 foot height internal clearance at a minimum for a tennis center per specs and requirements. The 42 feet requested allows for the necessary beam to the roof and the ridge of the building itself. The building is approximately 250 feet away from the single family residential neighborhood on the east side. The building will have a similar look to the Kaiser Library/LaFortune Community Center making a very unified master plan.

Interested Parties:
Fred Perry, 11404 East 133rd Street, Broken Arrow, OK; stated the building will be known as the Mike Case Tennis Center. Mr. Case has donated $1 million dollars toward the construction of the center. This is the last phase of a project that started 7 ½ years ago when twelve old tennis courts that were built in the 1960s were replaced with 18 new tennis courts. The facility will be a club house and three indoor courts. There is

BOA-20336-A

FILE COPY

an economic development aspect to this facility because Tulsa wants to attract more tournaments and this building will allow tournaments to play in the rain.

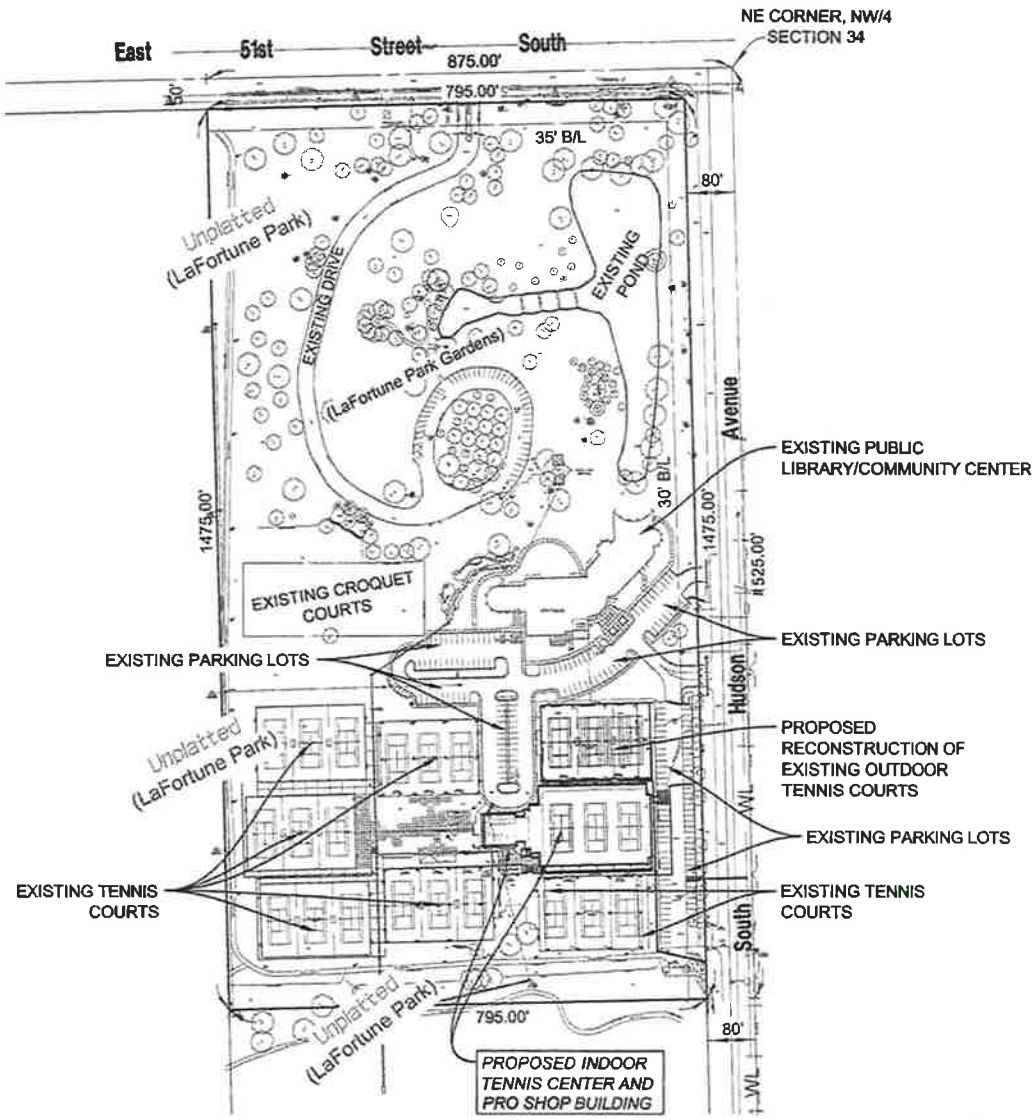
Richard Bales, County Park Director, 2315 Charles Page Boulevard, Tulsa, OK; stated he met with the Board members of LaFortune Park Neighborhood Association and the people that were in attendance were highly in favor of the proposed project.

Roger Coffey, Architect, 3519 South Birmingham, Tulsa, OK; stated this project has been years in the making. There are a number of people behind the scenes for the fund raising to make this project happen, and almost all of the money for this project was raised privately. LaFortune Park is one of the nicest active parks in Tulsa. There are always activities going on at LaFortune Park. The indoor tennis facility is the third phase of the master project. This facility will be an asset to the city that the citizens will use.

Comments and Questions:
None.

Board Action:
On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Variance of allowed building height from 35 feet to 42 feet (Section 403.A, Table 3); Modification to a previously approved Special Exception (BOA-20336) to permit construction of pro shop and enclosed athletic courts, subject to conceptual plan 10.14 and 10.15. For the Variance the height increase is to accommodate indoor tennis courts and the height is necessary to comply with the United States Tennis Association requirements. Finding by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan. Finding the Special Exception will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; for the following property:

A TRACT OF LAND DESCRIBED AS THE WEST 795 FEET OF THE EAST 875 FEET OF THE SOUTH 1475 FEET OF THE NORTH 1525 FEET OF THE EAST HALF (E/2) OF THE NORTHWEST QUARTER (NW/4) OF SECTION 34, TOWNSHIP NINETEEN (19) NORTH, RANGE THIRTEEN (13) EAST, TULSA COUNTY, OKLAHOMA, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

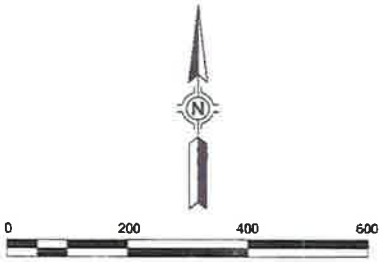


Location Map

SCALE: 1"=2000'

Legend

B/L = BUILDING SETBACK LINE



Scale: 1"=200'

Case Tennis Center at LaFortune Park

Board of Adjustment Exhibit (Site Plan)

Part of the NW/4 of

Sec. 34, T-19-N, R-13-E

City of Tulsa, Tulsa County, Oklahoma

BOA-20336-A

Sisemore Weisz & Associates, Inc.
6111 EAST 32nd PLACE
TULSA, OKLAHOMA 74135
C.A. NO 2421
PHONE (918) 665-3600
FAX (918) 665-8666
EXP DATE 6/30/15

FILE:	1913.3400	SURVEY BY:		DATE:	5/12/14
ORDER:	15740 11	DRAWN BY:	LAD,DLS	SCALE:	1"=200'
BOOK:		CHECKED BY:	DLA	SHEET 1	OF 2

4.6

Presentation:

Scott Brewer, 2224 E 24th Street, stated he is the owner of Hops and Grains. He stated when the Wild Oats store expanded they moved to the subject property. The general manager walked off the 300 ft. spacing. The verification information was included in the agenda packet. It was determined in mid-August.

Interested Parties:

Herb Beattie, 3474 South Zunis Avenue, stated he is the Co-President of the Brookside Neighborhood Association. One of their members walked off the area also and found no conflicting businesses within a 300 ft radius. Their association is in support of the application.

Nora Murrah, 300 West 111th Street, Jenks, Oklahoma, stated that she owns the apartment complex behind the subject property. They oppose the application. Mr. Dunham informed her that they already have a zoning clearance and this is just for spacing.

Mr. Ackermann asked the applicant if the public entrance door will be more than fifty feet from any residentially zoned district. Mr. Brewer replied it would be more than fifty feet. The back entrance is a service entrance only.

Board Action:

On **Motion** of **Stead**, the Board voted 5-0-0 (Dunham, Henke Stephens, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a Verification of the spacing requirements for an adult entertainment establishment (bar), dated August 2006. (Section 1212.a.C.3),on the following described property:

LTS 1, BLK 4, JENNINGS-ROBARDS ADDN, City of Tulsa, Tulsa County, State of Oklahoma

****

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

Case No. 20336

Action Requested:

Special Exception to permit a Public Library/Community Center in an RS-2 district, located: Southwest corner East 51st Street and South Hudson Avenue.

Presentation:

Darin Akerman, 6111 East 32nd Place, is with Sisemore, Weisz and Associates, Inc. They represented Tulsa County for a Library/Community Center which is part of the Vision 2025 Plan for the City of Tulsa. He reviewed the surrounding uses. There will be 130-140 additional parking spaces and one entrance on Hudson.

FILE COPY

The existing parking will be refined with new landscaping and proposed improvements. The maximum height of the structure will be 25 to 26 ft. He stated there will be meeting rooms and a basketball court. It will be stucco with a lot of glass.

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

Comments and Questions:

Mr. Henke asked if they have sought relief from requirements for sidewalks. Mr. Akerman replied the project manager sent a waiver request letter for relief on the sidewalk requirements along Hudson Avenue. They felt that the trail along the west side of the structure would provide ample access routes for pedestrians in connection with other park trails and sidewalks on 51st Street. The existing retaining walls along the parking lot and other structures impede sidewalks without extensive retaining walls or storm water improvement structures, along Hudson Avenue. Initially, there was a letter of support for the sidewalk waiver after Public Works reviewed the requested permits, stating there was no subdivision platting requirement for the property in conjunction with the request. Later they discovered there was a special exception requirement which would trigger the platting requirement. Mr. Henke asked why the special exception was just now coming to the Board, after the ground-breaking. Mr. Akerman was not sure and agreed with Mr. Henke that this relief was overlooked.

Kurt Ackermann asked the applicant if they expected the special exception under Use Unit 5 to trigger a requirement for a plat from TMAPC. Mr. Darin Akerman replied it would trigger the plat requirement or a waiver of the plat. He asked if they have applied to TMAPC for a plat waiver, which Mr. Akerman replied affirmatively. Mr. K. Ackermann asked if they requested a waiver of the sidewalks from the planning commission. He replied in the affirmative, stating that letter would have been submitted earlier this week by Mr. Byer.

Mr. Stephens asked if the half-court basketball court is fully enclosed, to which Mr. Akerman replied that it is. Mr. Akerman stated they had a meeting in April 2006 with about 100 residents and representatives and there appeared to be strong support.

FILE COPY

Interested Parties:

Greg Jennings, stated he is not opposed to the application but he did not know why the TMAPC would need to deal with a sidewalk issue. He did not understand why the County would not want to support sidewalks on a 2025 Plan project. He noted the subdivision regulations specifically state a requirement for sidewalks to provide adequate pedestrian traffic. He stated this project includes parks, trails, library, and a community center.

Mr. Stephens out at 2:56 p.m.

Mr. Ackermann stated he expected the planning commission would look forward to this Board making a statement or a decision on this issue.

Mr. Stephens returned at 2:59 p.m.

Richard Bales, 2315 Charles Page Boulevard, Park Director, stated they planned for sidewalks with paved walkways through the gardens in time. They did not want to place a straight sidewalk from 51st Street down Hudson. They did not want it to be part of this project and is not included in the budget for this part of the process. Mr. Henke asked him when they planned to do the sidewalk.

Mr. Al Byers(inaudible) 624 South Boston, stated the plan shows how the sidewalk would tie in to the original plan. They plan to construct the sidewalk behind the existing berm, which connects with the gardens all the way back to 51st Street.

FILE COPY

Board Action:

On **Motion** of **Dunham**, the Board voted 5-0-0 (Dunham, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a Special Exception to permit a Public Library/Community Center in an RS-2 district, with a two-year waiver of construction of a curved linear sidewalk, per plan submitted at the hearing, on the following described property:

W795 E875 S1475 N1525 NW SEC 34 19 13 26.92ACS, City of Tulsa, Tulsa County, State of Oklahoma

****

Case No. 20337

Action Requested:

Special Exception to allow an 8' privacy fence in the front yard. (210.B.3), located: 1725 East 41st Street South.

Presentation:

Gregory Helms, 329 South Elm Street, Jenks, Oklahoma, represented the property owner. He pointed out that the property is directly across from Victor Avenue. The wall was to buffer the property along 41st Street. He noted the staff comments regarding a 6 ft. wall along Xanthus Avenue. He measured that wall and found it to be 8 ft.

Comments and Questions:

Mr. Cuthbertson responded that a rear yard or side yard are allowed to have six or eight foot fences. Mr. Henke stated that this application is for the front yard. Mr. Helms replied he was just pointing out that there are walls along 41st Street.

Feet
0 300 600

Subject Tract

BOA-20366-B

19-13 34

Note: Graphic overlays may not precisely align with physical features on the ground.

Aerial Photo Date: February 2016

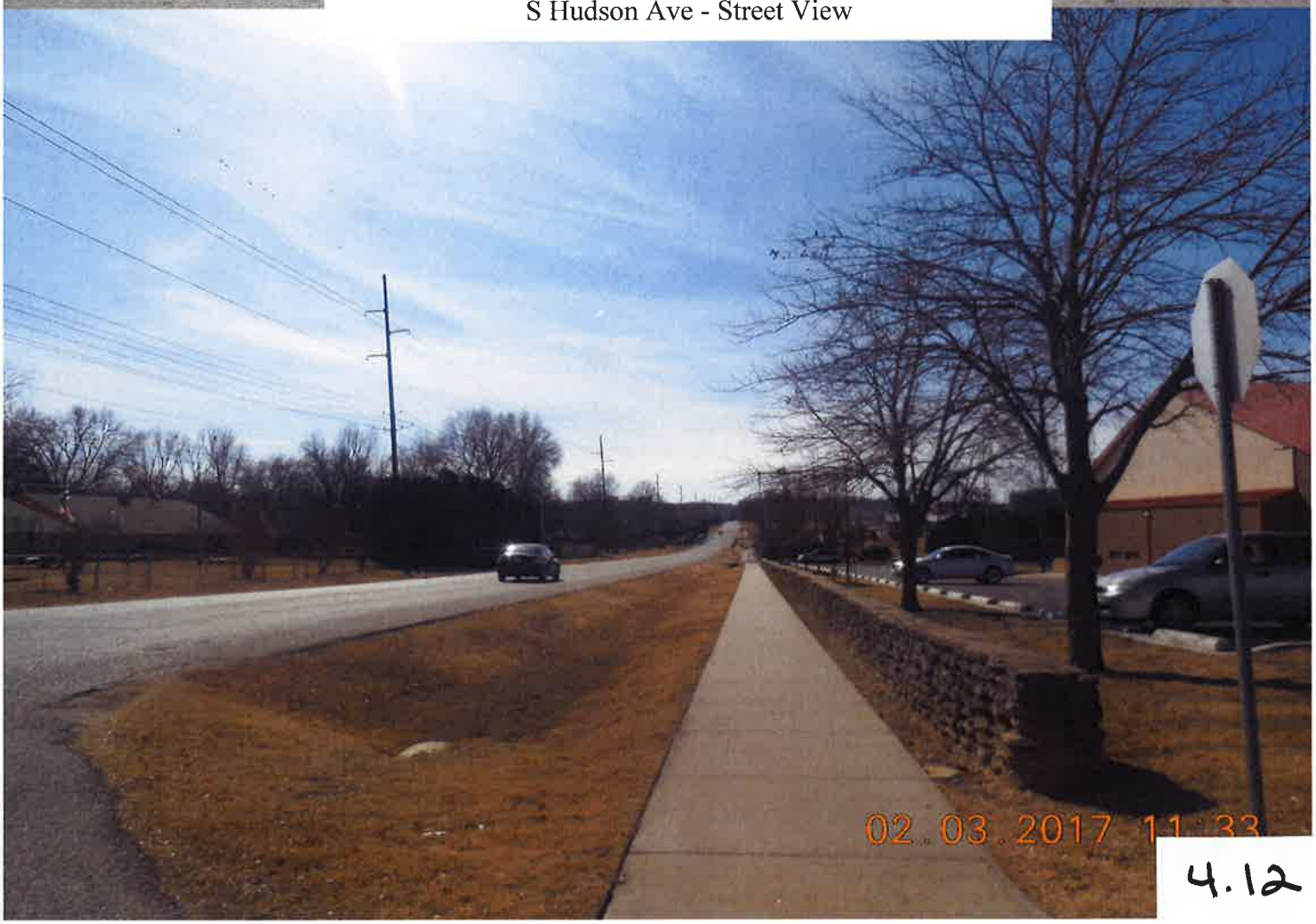
4.10

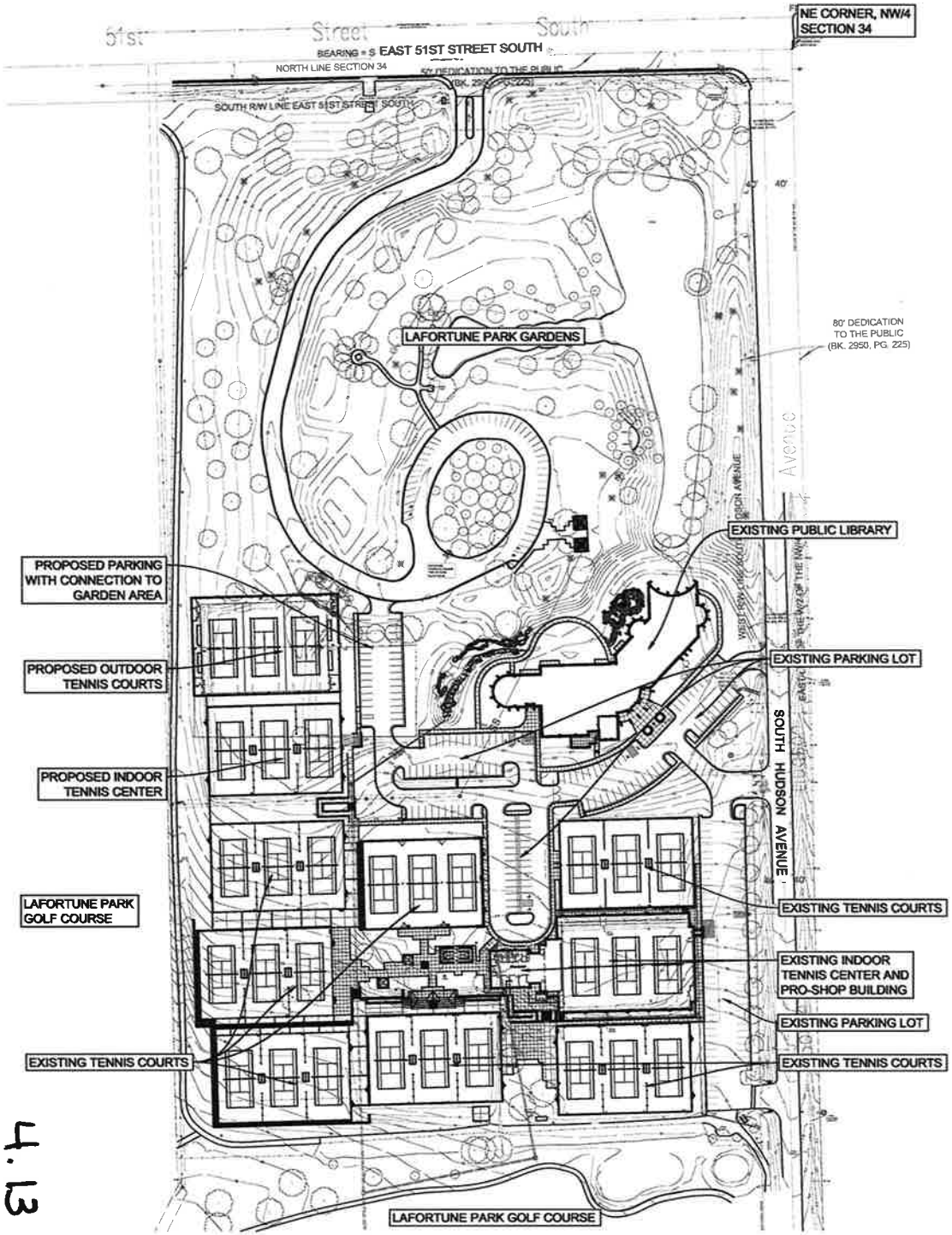
N

Subject Site- Looking North

Subject Site- Looking NW

S Hudson Ave - Street View





DETAIL SITE PLAN
FOR

IN OF PART OF THE
NW/4 OF
SECTION 34, T-19-N, R-13-E
CITY OF TULSA, TULSA COUNTY, OKLAHOMA

JANUARY 25, 2017

120 0 60 120 240

4.13

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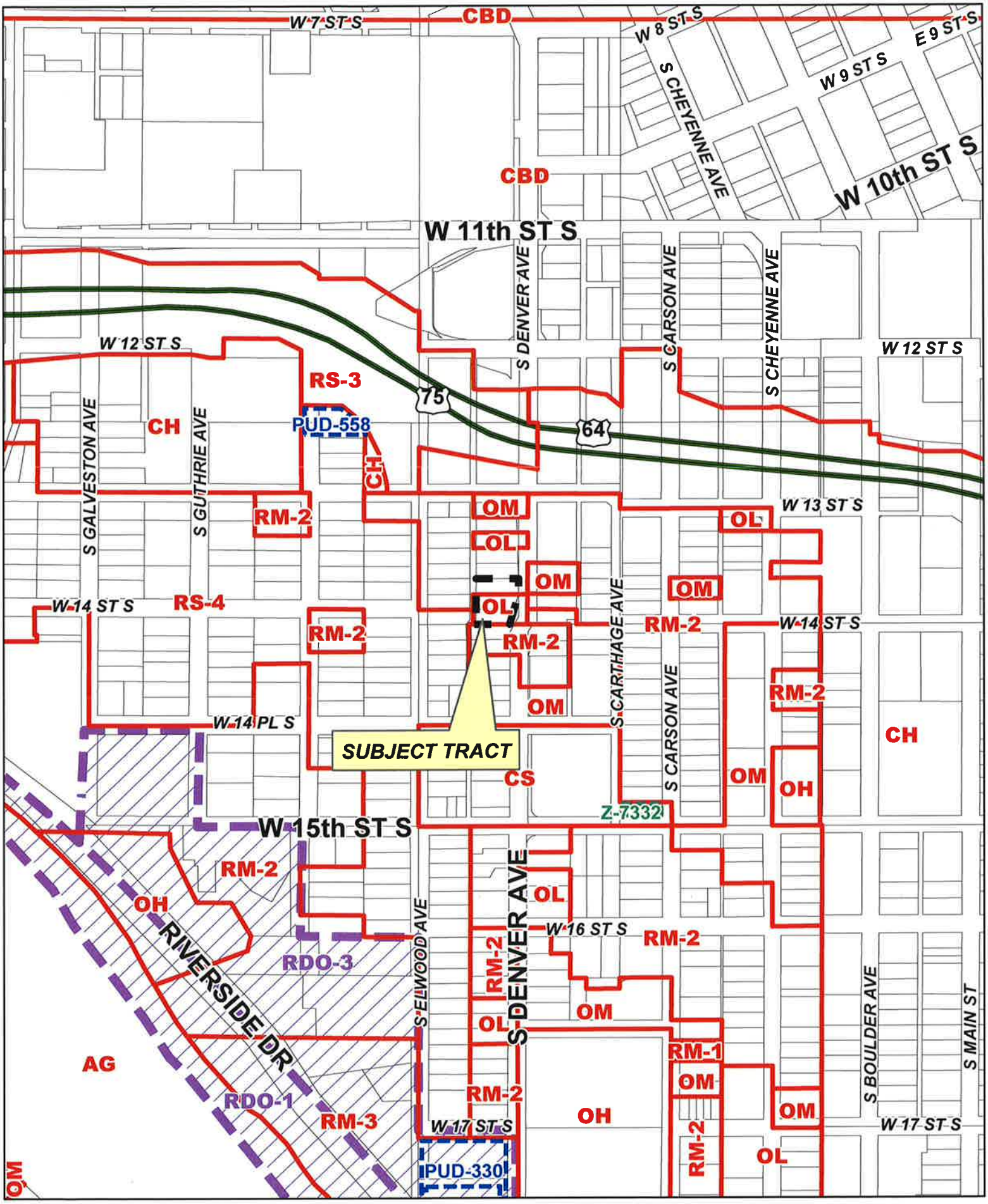


Feet
0 200 400

BOA-22209

19-12 12

5.1

N

BOARD OF ADJUSTMENT
CASE REPORT

STR: 9212
CZM: 36
CD: 4
A-P#: 8923

Case Number: **BOA-22209**

HEARING DATE: 03/14/2017 1:00 PM

APPLICANT: Hugh Long-Hall Estill

ACTION REQUESTED: Special Exception for a temporary use as a storage and staging area for construction equipment and materials in the OL and RM-2 district. (Section 50.020-D)

LOCATION: N of the NW/c of W 14 ST S and S Denver Ave

ZONED: OL, RM-2

PRESENT USE: Vacant Lot

TRACT SIZE: 19628.22 SQ FT

LEGAL DESCRIPTION: LT 6 BLK 3; LT 7 LESS BEG NEC TH SW TO PT APROX 15W SECR E15 N50 POB FOR ST BLK 3; LT 8 LESS BEG NEC TH W APROX 15 SW TO PT 15W SECR E15 EL NE TO PT N25 POB FOR ST BLK 3, CAMPBELL ADDN, T T T ADDN AMD, City of Tulsa, Tulsa County, State of Oklahoma

RELEVANT PREVIOUS ACTIONS:

BOA 21784; on 09.23.14 the Board approved a Special Exception to permit offsite construction facilities including staging and storage of construction equipment and materials; Variance of 2-year time limitation on constructions facilities to allow 5 years; Variance to permit construction facilities to be located within 100 feet of an occupied dwelling without consent of the owner; Variance from the bulk and area requirements set forth in Section 404.F. **Located at the NW/c of E 31 Street S & S Boston and the SE/c of S Riverside Drive & E 31 Street S.**

RELATIONSHIP TO THE COMPREHENSIVE PLAN: The Tulsa Comprehensive Plan identifies the subject property as part of a "Downtown Neighborhood" and an "Area of Stability".

Downtown Neighborhoods are located outside, but are tightly integrated with the Downtown Core. These areas are comprised of university and higher educational campuses and their attendant housing and retail districts, former warehousing and manufacturing areas that are evolving into areas where people both live and work, and medium- to high-rise mixed use residential areas. Downtown Neighborhoods are primarily pedestrian-oriented and are well connected to the Downtown Core via local transit. They feature parks and open space, typically at the neighborhood scale.

The Land Use Category, **Area of Stability**, includes approximately 75% of the city's total parcels. The ideal for the Areas of Stability is to identify and maintain the valued character of an area while accommodating the rehabilitation, improvement or replacement of existing homes, and small scale infill projects. The concept of stability and growth is specifically designed to enhance the unique qualities of older neighborhoods that are looking for new ways to preserve their character and quality of life. The concept of stability and growth is specifically designed to enhance the unique qualities of older neighborhoods that are looking for new ways to preserve their character and quality of life.

5.2

ANALYSIS OF SURROUNDING AREA: The subject tract is abutted by RM-2 zoned residential on the north and south; S Peoria Ave, OM and RM-2 zoning abuts the site on the east. RM-2 and RS-4 zoned residential abuts the site on the west.

STAFF COMMENTS:

In a attached letter the applicant has stated that the subject site will be used to store and stage construction equipment and materials related to a multi-family development project at the southwest corner of W 17th St S and S Peoria Ave. Development of the multi-family project is anticipated to commence on or around March 1, 2017 and is anticipated to be complete on December 31, 2018. Within 45 days of completion of the Project, the developer will remove all equipment and materials from the subject property. The applicant has stated that the Project is being constructed with a "zero setback" development with buildings and improvements being constructed near the street. As such, the Project site is constrained in its ability to store and stage construction equipment and materials on site.

There is a concern that truck traffic will travel through the residential neighborhood immediately east of the subject site; the applicant has not provided information related to the anticipated route of truck traffic. Staff encourages the Board to ask the applicant about the anticipated hours and days of operation, site lighting (if any) and the amount of noise and truck traffic anticipated to take place on-site.

The Code requires that temporary construction and staging areas be located on the Project site; therefore the proposed off-site temporary storage and staging area does not meet the applicable zoning regulations. **Section 50.020-D** of the Code states that temporary uses that do not comply with the applicable regulations and conditions of approval may be approved by the board of adjustment as a special exception.

If inclined to approve the Board may consider any condition it deems necessary and reasonably related to the request to ensure that the proposed use and future development of the subject property is compatible with and non-injurious to the surrounding area. The Board may consider imposing a time limit, hours of operation and requiring that the applicant construct and maintain a 6 ft. screening fence around the perimeter of the site.

Sample Motion for a Special Exception

Move to _____ (approve/deny) a Special Exception for a temporary use as a storage and staging area for construction equipment and materials in the OL and RM-2 district. (Section 50.020-D)

- Per the Conceptual Plan(s) shown on page(s) _____ of the agenda packet.
- Subject to the following conditions (including time limitation, if any):

  _____.

The Board finds that the requested Special Exception 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.

Feet
0 200 400

Subject Tract

BOA-22209

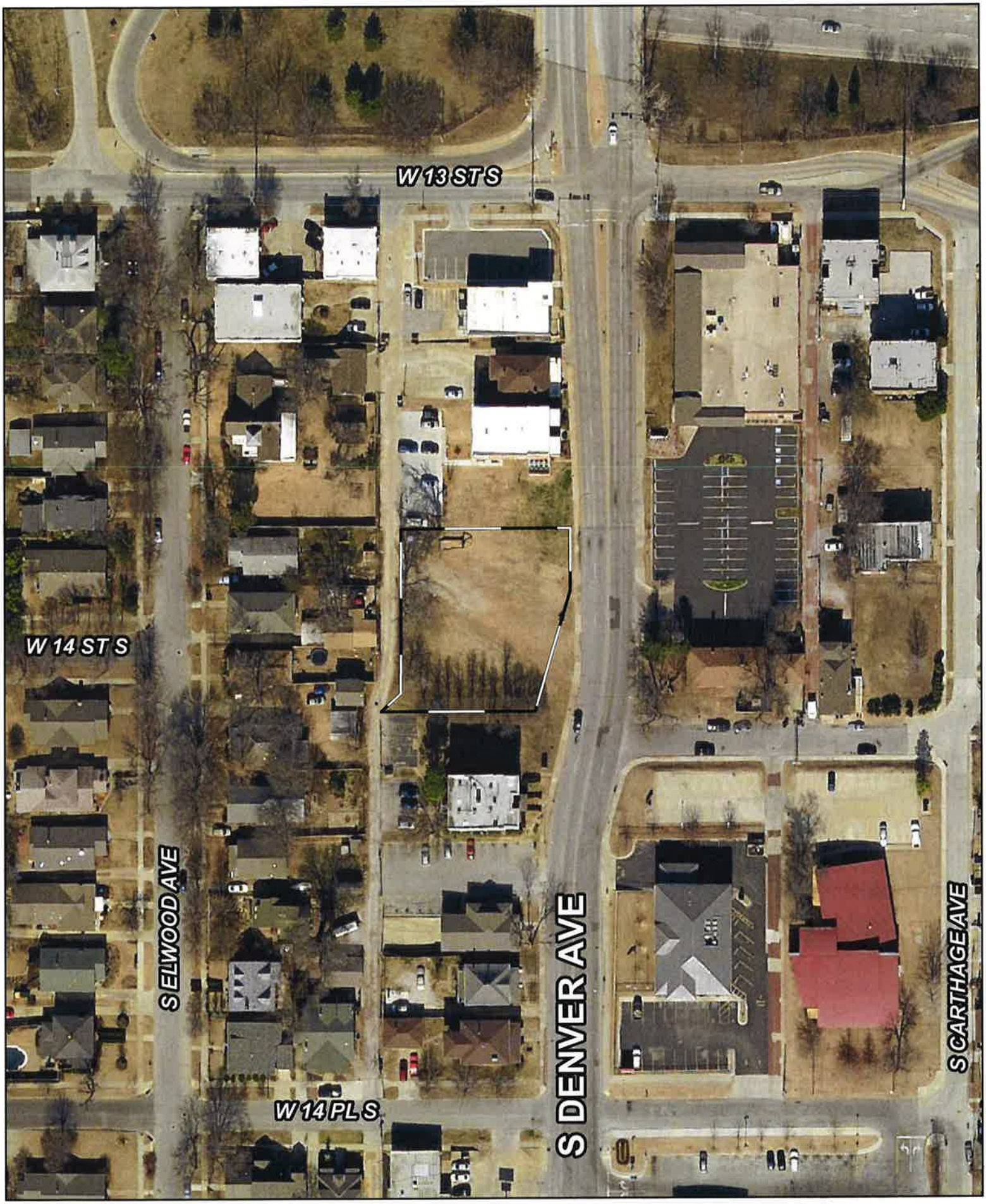
19-12 12

Note: Graphic overlays may not precisely align with physical features on the ground.

Aerial Photo Date: February 2016

5.4

N



Feet
0 50 100

Subject Tract

BOA-22209

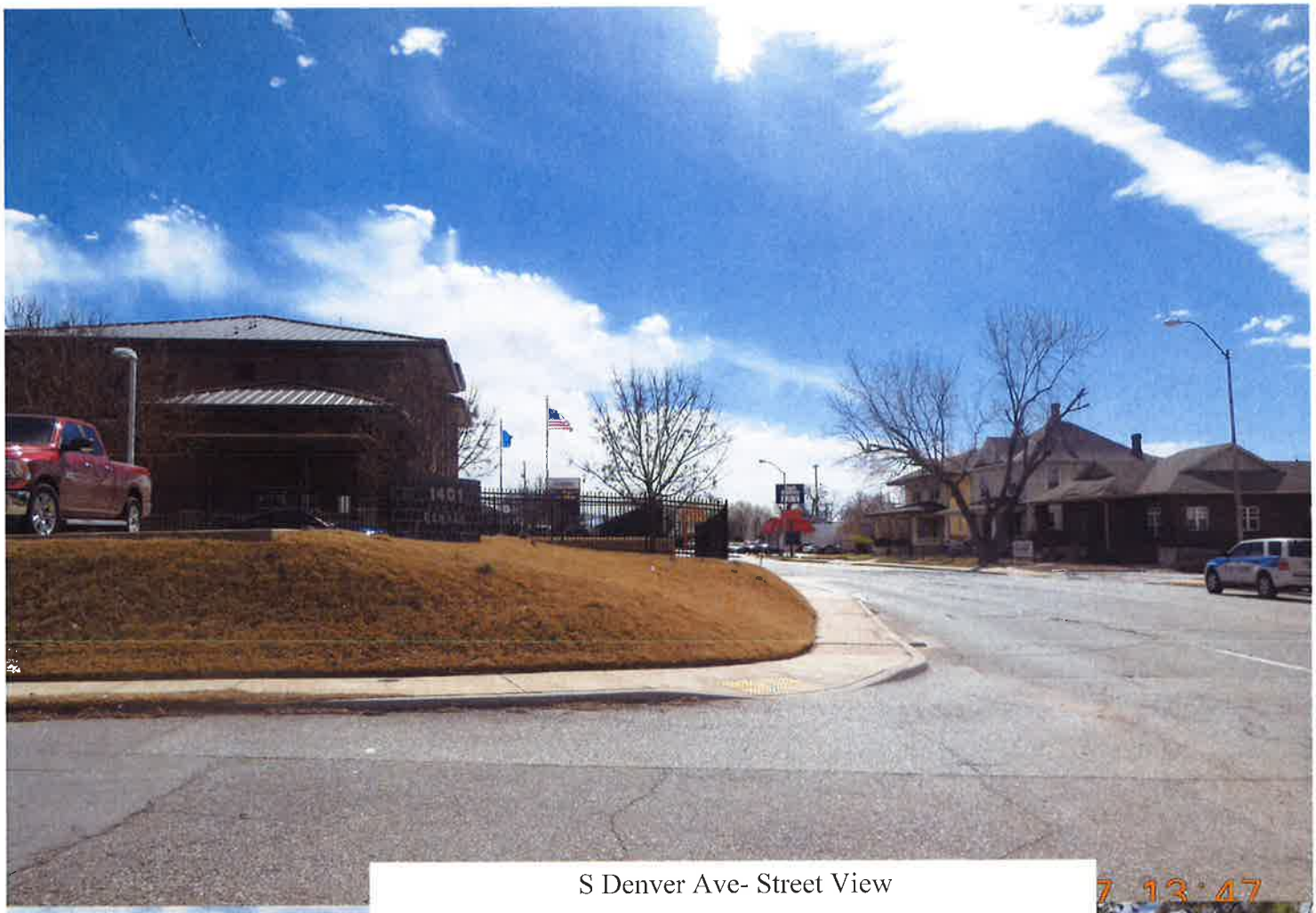
19-12 12

Note: Graphic overlays may not precisely align with physical features on the ground.

Aerial Photo Date: February 2016

N

5.5

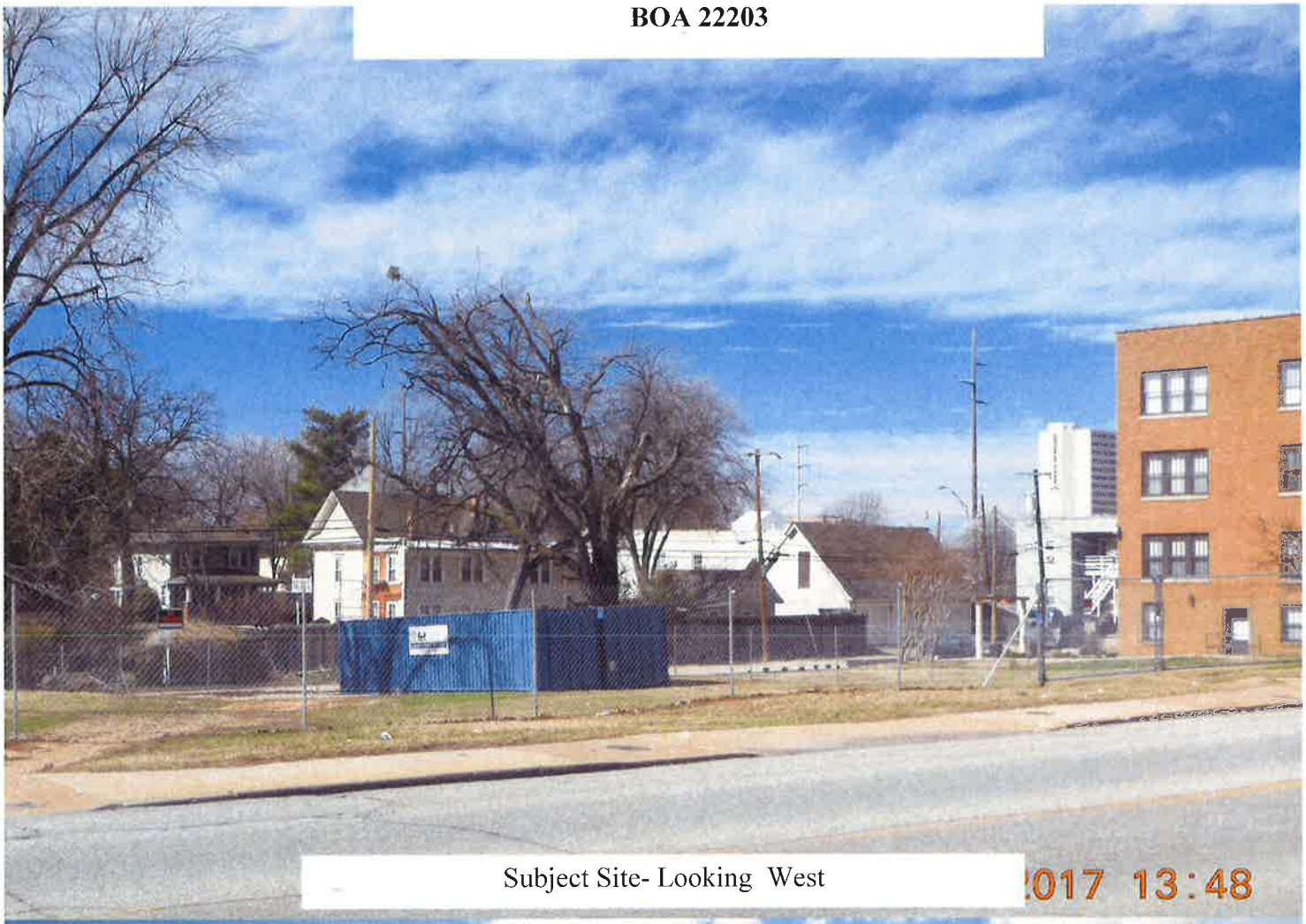


S Denver Ave- Street View

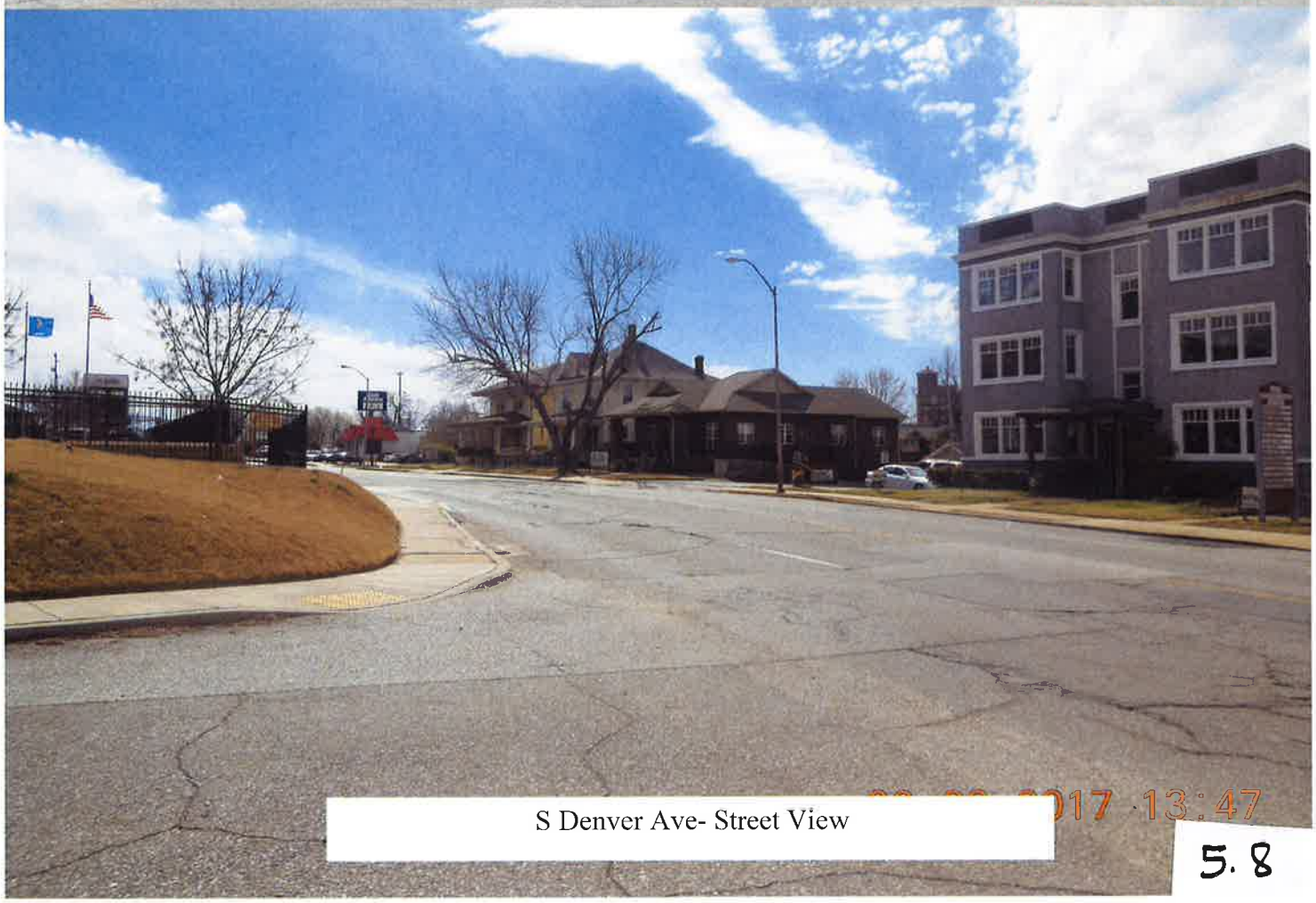
BOA 22203

Subject Site- Looking West

BOA 22203



Subject Site- Looking West



S Denver Ave- Street View

Mr. White asked if this was a private playground that is open to the public. Mr. Beach answered affirmatively.

Interested Parties:
There were no interested parties present.

Comments and Questions:
None.

Board Action:
On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Special Exception to permit a playground (Use Unit 5) in an OL District (Section 601, Table 1). This approval will be as located on pages 6.6 and 6.14. Finding the Special Exception will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; for the following property:

S132 OF N264 E/2 NE SE SE SEC 23 20 12; N198 OF S396 E/2 NE SE SE SEC 23 20 12; S198 E/2 NE SE SE LESS S30 & E16.5 FOR ST SEC 23 20 12 1.209ACS,HIGHLAND HILLS AMD, DEVONSHIRE PLACE FOURTH RESUB BOULEVARD ACRES, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21784—Roy Johnsen

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Action Requested:
Special Exception to permit offsite construction facililties (Use Unit 2) including staging and storage of construction equipment and materials (Section 401, Table 1 and Section 1202.B); Variance of 2-year time limitation on construction facilities to allow 5 years (Section 1202.C.4.a); Variance to permit construction facilities to be located within 100 feet of an occupied dwelling without consent of the owner (Section 1204.C.4.c); Variance from the bulk and area requirements set forth in Section 404.F. **LOCATION:** NW/c of East 31st Street and South Boston Place **AND** SE/c of Riverside Drive and East 31st Street **(CD 4, 9)**

Ms. Snyder recused herself and left the meeting at 1:17 P.M.

Presentation:
Roy Johnsen, 1 West 3rd Street, Suite 1010, Tulsa, OK; stated he is representing the Kaiser Family Foundation. A PUD was approved by the City Council and Tulsa Metropolitan Area Planning Commission in July 2013 for the subject property with no objections. Now is the time to prepare for the construction and this will be a large

difficult job with tremendous detail. In the Zoning code Use Unit 2 provides for Special Exceptions in any district, and one of the Special Exceptions is the use of off-site property for construction purposes. Mr. Jeff Stava held a neighborhood meeting last evening and presented a good outline of the project. The Gathering Place project will be a wonderful project for the City of Tulsa.

Jeff Stava, 7030 South Yale, Suite 600, Tulsa, OK; stated this is an incredibly complex project. There will be a 100 acre park built between a river and a neighborhood. The project has been in planning for almost seven years and publicly engaged for two years. The contractor was hired in early May 2014 and through that process it was learned that a very large layout area was needed in order to stage construction for the project. The fences will be erected this week for the project site and it will take about two weeks to get the site fully contained. In preconstruction the lay down yard will be located on the south side of 31st Street across Crow Creek to the back of the homes located on 33rd Place across Cincinnati. This will include all of the Legacy Apartment Complex and the Sundance Apartment Complex. There is also a lot on the corner of 31st and Boston Place that is owned for the Gathering Place. The apartments located on the east side of Cincinnati will not be torn down in this phase. There are several tenants that have special needs and it will be at least a year as the transition is begun for those tenants. Everything on the west side of Cincinnati including the Sundance Apartment Complex will be razed and the Variance request is to allow the preconstruction yard in that area. At this point Mr. Stava used pictures on the overhead projector to give a visual of the subject area and the proposed fencing. Many of the residents asked for a parking lot or storage in the area closest to the houses, it was determined that with all the morning noise it would be ill advised so by placing the building in that location it will shield the residents from a lot of the noise that will occur. In the second stage of the project there will be approximately 7,000 trees and 50,000 plants will be brought in for storage before planting. It is very important that the contractors be adjacent to the site to be able to evaluate and see the condition and quality of the project as it progresses. If there is a problem they need to be able to immediately go back to the sample and models that have been approved so progress can smoothly continue. There will also be a designated area for parking and construction trailers for all the subcontractors. There will be anywhere from 50 to 100 workers at the beginning of the project and go up to approximately 500 workers on the site. Some of these workers will park on the subject site but it is also anticipated that some off site parking locations will be needed as well for the workers. Mr. Stava stated that his company had sent out a six page packet notice to the all of the residents within 300 feet, they visited door to door with the residents that live within 100 feet, and they sat down with each of the homeowners that are immediately adjacent to the site. All of the residents concur that the building is the best and most passive use to be next to the project.

Mr. Van De Wiele asked Mr. Stava if he worked with the residents on the layout of the project. Mr. Stava answered affirmatively.

Mr. Stava had a picture of the proposed project building placed on the overhead projector. The building is 11'-6" from the edge of the curb line, and it sits 20 feet from

the front edge of an adjacent house. The fencing will be run behind the building on the east side then block Boston Place to prevent construction traffic on the street, and proposing to block 31st Street west of Boston Court and at Riverside Drive. This will prevent any detour traffic on Riverside from using 31st Street and traveling through the neighborhood to go downtown. It will also prevent construction workers from parking on the street. The back of the construction site will be with the neighborhood and not have the front of the construction site into the neighborhood. The street closures chosen work for many reasons. The City must run a new major stormwater line which will cross Riverside Drive to dump into the Arkansas River, and it will allow the 440,000 cubic yards of dirt to be moved. The City hosted a neighborhood meeting with Maple Ridge and some of the other neighbors regarding Riverside Drive, and he attended that meeting. A lot of the concerns of the residents was what happens to the detour traffic if the road is not closed, and that aided in the decision to recommend the street closure.

Mr. Henke reminded Mr. Stava and the audience that the Board of Adjustment does not deal with street closures. Mr. Stava acknowledged the statement and stated that it is important in context because the building is facing west and the back of the building is facing the neighborhood. There will be no construction entrances or exits anywhere along the neighborhood side of the project site.

Interested Parties:

Mark Graham, 2551 South Owasso Avenue, Tulsa, OK; stated he has lived in Maple Ridge for 35 years. This $300 million to the City is the result of a lot of community conversation, a lot of empathy with the neighborhood, and there has been no hiding of that fact. In the last year in Maple Ridge the neighborhood has had gas lines replaced, water lines being prepared for replacement, and in his neighborhood they have been maneuvering detours for months. It is a reality what people go through in order to have a better city. This iconic gift will set Tulsa apart from any other city in the United States. He would ask the Board not handcuff the construction with a requirement that will potentially be more costly, more time consuming and could create more inconvenience for the neighborhood and the city.

Blake Ewing, City Councilor, 175 East 2nd Street, Tulsa, OK; stated that as a Councilor he becomes the complaint line for the citizens of Tulsa. People are concerned about this project and how it might affect the way they live in the Maple Ridge neighborhood. What he can attest to is that he knows Paul Zachary and the City staff, as it relates to the City of Tulsa's part of this project, are doing everything they can to mitigate the imposition to the citizens of Tulsa and the affected neighborhoods. He feels Mr. Stava was quite thorough in his presentation at the meeting last evening. As Councilor he know numbers matter, and the sentiment of the public matters as decisions are being made in land use. There was frustration voiced in the meeting last evening but his sentiment is that it was overwhelmingly positive. There is no way around what is coming. Streets are going to be closed and people will need to take a different route to and from work. There are things in the city that are taken for granted, and at some point those things caused great imposition. The Broken Arrow Expressway was not always in existence. Those were just neighborhoods that it now splits into two. As community

things like this have been dealt with before with the understanding that it was for the long term greater good of the community. The citizens have been able to see that such investments have made the city better, and the short term sacrifice was worth it in the long run. The proposals presented today are worth it. This type of investment on this scale requires a great deal of space in order to stage the project, and they are already short on space. The hardship, in his words, is the issue of how to make this enormous project happen with the limited area utilized. Mr. Ewing thinks this is a justified request and he believes his constituents would that statement.

Adam Burney, 3016 South Boston Place, Tulsa, OK; stated he objects to the building and the Variances. He thinks the park is a positive thing for Tulsa. He thinks it is something that will be a world class destination. He objects to the building because it is a commercial entity entering a residential neighborhood. It is so close to the curb and he believes it will constitute a public nuisance. It is so close to the street that it blocks the sight triangle into the intersection of South Boston Place and 31st Street. Allowing a building that large on a lot that small will constitute a problem for traffic flow. He thinks that the spirit and intent of the zoning regulations are being exceeded in this instance because of the five year request. It has been stated that Phase I will take three or four years so he thinks the Variance should only be for four years not five. He attended the meeting last evening and he heard information that he has not heard before, i.e., from the City Engineer regarding drainage. The drainage projects are going to be happening concurrently with the construction of the park. One of the projects will be the drainage on 30th Street which deadends into the park. The Engineer stated that at times the street will be closed and that creates a problem for the residents of South Boston Place. Because of the street plan that has been laid out by the applicant for closing 31st Street, if they also close 30th Street the residents will ensentially be marooned. There has to be an alternate plan for traffic because of the building, and he would like to hear about an alternate plan. He believes this process could have been a lot simpler if the lot had been included in a PUD. It is not included in the park plan. It is a separate lot and that is why there are all the Variances being requested. He has only heard a lot of this information in the last week and he lives six houses away from the project, and he did not know it was going up until there were signs placed in the subject property. He understands the 300 foot rule, but if they want to go above and beyond to communicate with the community they need go past 300 feet to inform everyone. Mr. Burney quoted Section 1202.C.4.b, "the ingress and egress of this building must be from an aterial or collector street". The applicant has stated that the entrance will be from the west side. There is no arterial or collector street on the west side of the building, it is part of the construction site. He feels that since the building is oriented as it is the applicant will be inviolation of the zoning code. He thinks the park objectives can be met without the building. They can construct a world class park without having the building in a residential neighborhood.

David Brennan, 3020 South Boston Place, Tulsa, OK; stated he has lived in the neighborhood for five years. On September 9th he received a letter in the mail from the management team regarding the project, stating that the building would be erected. That is the first he knew about it. There have been a lot of things that have come up

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BOA-21784

and the neighborhood was not aware of just recently. There was a meeting with the management team on September 12th to discuss what the option were for the neighborhood and what was the neighborhood willing to compromise on. The neighborhood was informed that the building would be on the site for the duration of the project. His first concern is the impact this project will have on his property value. He did some research and it is not clear the benefits that will come from the park. Most of the economic benefit will be from the quality of the part and for the dwellings that are within 500 feet of the park. In his research he found that problematic parks decrease property value by 5% for dwellings within 500 feet. A problematic park is a park that has noise, lights, and parking. For the next five years The Gathering Place project will be assumed and profiled as a problematic park thus decreasing the value of his home even it is transitory for the next five to eight years. He will not be able to sell his house. He is 60 years old and he could retire in five years and not be able to sell his house because of the devalued price. He believes there was a fabulous job done in selling the park, but it could have been done better when it comes to the residents within 500 feet of the project. He thinks there should have been a proportional consensus from the community because this is a huge park, and what he saw at the meeting last evening was minimal. This is a hardship on the neighborhood. He would ask on behalf of the neighborhood that they be allowed more time to consider other options, like reduce the building size. There is a 1,000 square foot conference room with a second conference room. He has never seen a construction building like this. The building is huge and it does not fit the property. It is 7,000 square feet being erected a 9,000 square foot piece of property. This building is ill conceived and he thinks it can be done better.

James Daniel "Dan" Simpson, 2916 South Detroit, Tulsa, OK; stated he will be inconvenienced by all of this for the next four to five years as will any of his neighbors. There will be a building that people may not want to look at, however, it is a temporary construction building. A temporary building that will be used by the safety officers; site management keeping as close to the project as possible. As for the street closures he would like to hear the option of moving the barriers when 30th Place is closed and when they will be open and the installation of a gate. All of the neighbors will not agree with him but they will all agree that when this project is completed Tulsa will have a world class park. It is the largest gift to a city in the history of this nation, not just the state of Oklahoma. He would encourage the Board to move forward and minimize the inconvenience where possible and get started.

Casey Robinson, 3026 South Boston Place, Tulsa, OK; stated he lives three houses away from the subject site and has lived there for four years. He did not purchase the house ever thinking that a commercial building would be allowed in a residential neighborhood. Forget how many millions are going into this park. If this were any other project a commerical building would not be allowed in a residential neighborhood. He attended the meeting last evening and heard information that had never been heard before. He would like some more time to review the information presented. He would like the Board to consider that this is not the right place for the proposed building. He also has concerns over whether the building will be temporary, because when he looks

at a building like that he does not think temporary. As a neighborhood they would like to have some assurance, something in writing, that the building will be temporary.

Debbie Saunders, 3116 South Boston Court, Tulsa, OK; stated she learned something today that she did not know, and she was not invited to the meeting of last evening. Her back yard backs up to the project site, and she pointed to an area on the map that was on the overhead projector. She knew the staging would be placed in that area designated on the map but she did not know the parking would be staged next to her fence. This will be horrifying and she does not know if she will be able to stay. She and her sister share in the care of their aging disabled mother. The noise will be unbearable and will drive her dogs crazy. She would like to see the parking and the noisier operations moved to another area.

Anita Saunders, 3126 South Boston Court, Tulsa, OK; stated she has been looking forward to the start of this project, and she realizes there will be pains along the way. Ms. Saunders stated that the neighborhood was not informed as to how things were going to be laid out. She is concerned over the road closure because her street is a dead end street. She thinks that once the street is blocked off it will become a turn around area. She understands that there will be noise associated with the project but she wishes they would move the parking or create some kind of barrier between the back of the houses and the activity. She would like to have the Board give the neighborhood additional time to work with Mr. Stava.

Millie York, 3020 South Boston Place, Tulsa, OK; stated she filed a formal letter of protest against the building. In doing research she understands the applicant must prove hardship to receive an approval. When she asked Mr. Stava what the hardship was he answered $350 million dollars. She does not think that is a hardship. There is one hundred acres to place this building on and having one hundred acres is not a hardship. There are plenty of places away from a single family neighborhood for the building to be placed, it is just where the applicant wants it to go. In spite of the applicant saying this is for five years she knows the Board can grant them an additional five years. Mr. Stava told her that the proposed building would be the first building up and the last building down when Stage II is completed. Ten years is not temporary. A ten year construction building at the end of the neighborhood block is going to cause the residents a hardship. Blocking both ends of the street causes response time delays. That is a public safety hazard and needs to be addressed. She wants to have this meeting continued to next month because the neighbors were not given all the information and the neighbors need more time to gather data.

Mr. Van De Wiele asked Ms. York where she was getting the ten year time frame. Ms. York stated the ten year time frame comes from the fact that Mr. Stava told her in his office on September 12th that the proposed building will be the first building up and the last building down when Phase II is complete. She understands that and is not against the building because she agrees it is being placed in the best place, if the building is built to the style, rhythm and size of the neighborhood. She is very concerned about the road closures at both ends of the street because it really is a safety issue. She would

BOA-21784 FILE COPY

request more time be given so the neighbors can gather data of the impact of this oversized building on the little neighborhood.

Mr. Henke asked Ms. York if she was objecting to the number of square feet. Ms. York stated that she was not objecting to that but is objecting to the amount of space it occupies on the lot. Another construction company has donated the metal building to Manhattan Construction so they are saving money. This is about the residents lives, our peace, our quiet and inconveniences.

Mr. Henke stated the Board must focus on this piece of property and the relief requested for the building. Some of the neighbors may disagree with the height at 20 feet and some may be supportive with the design. Ms. York stated that if Manhattan Construction wants the building to look like a tin construction building then reduce the size of the building. If they don't want to reduce the size and have the option of making it something that will not devalue the homes over the next ten years that should be considered. Mr. Henke stated the request today is for five years.

Jennifer Kisamore, 137 East 34th Street, Tulsa, OK; stated she lives at the corner of 34th Street and Cincinnati. She would like to have the Board continue this request because the size of the building and the closing of 31st Street. Traffic will be routed down Cincinnati because it is a through street which is a narrow residential street that people already run the stop sign at 34th Street. The community needs more time to consider the issue.

Millie Clark, 3025 South Boston Place, Tulsa, OK; stated she is one of the elderly people that lives on Boston Place which will be blocked off on both ends. Due to visual and ambulatory difficulties she has she objects to the street closing because she will not be able to get in or out. She also has reservations made to enter a retirement center and if the street is blocked off and the neighborhood is marooned as an island how will she be able to move. How will her property values be affected? Her moving into a retirement center is totally contingent upon the sale of her house. She would prefer something else be done for a short period of time. Mr. Henke stated the Board does not have the ability to open and close street but he understands her concern. Mr. Henke stated he will ask the City about marooning the neighbors.

Brooke Caviness, Senior Engineer, City of Tulsa, 175 East 2nd Street, Tulsa, OK; stated the City is planning on performing drainage improvements to the neighborhood at 30th Street. The plan is to parallel a line with another 48 inch line. When the construction starts the City need to cut across Boston Place but the City will maintain access. There may 20 feet of rock but the City will maintain access. If there is a situation where the City cannot maintain the access they will open 31st Street. The City will not maroon any residents. The City anticipates the project to last approximately two weeks to perform the work across Boston Place.

Herb Beattie, 3474 South Zunis Avenue, Tulsa, OK; stated he has been representing the Brookside Neighborhood Association for over a decade. Projects like this are

BOA-21784 FILE COPY

associated with street closings. He has attended many meetings with Mr. Stava, the City Engineering Department, City Councilors and the neighbors for the last two or three years on related matters to this project. They have been consistently responsive, considerate and gone out of their way to understanding the needs and concerns of the neighbors and to make adjustments where it is appropriate.

Jason Brimer, 3045 South Boston Place, Tulsa, OK; stated he lives directly east of the proposed construction office site. He is in favor of moving forward with the project. He understands the reluctance of some of the neighbors and their concerns. He appreciates what GKFF and Manhattan has done in turning the building and the whole construction area so the backend faces the neighborhood. The look and feel of the building will blend in as well as possible considering in the southwest portion there is going to be nothing but construction machinery.

Mr. Van De Wiele asked Mr. Brimer if his preference is the mock up presented today. Mr. Brimer answered affirmatively.

Mr. Henke left the meeting at 2:21 P.M. and re-entered the meeting at 2:22 P.M.

Jeff Stava came forward. The original concept that was submitted there was a 14 foot eave with a 20 foot peak on the building. There was an eight foot cedar fence with plantings in front of it. As they went around the neighborhood there were some people that did not want the fence and some people did not want the plantings. Mr. Stava recommended that the fencing around the building be vetoed, and just have the fencing from the corner of the building across Boston Place and plantings elsewhere. So there would be fencing on the north and east sides and plantings across it so the building will fit more into the fabric of the neighborhood. On the south side of the building there will be doorway and no fence, and the site will be open to 31st Street. On the west side there will be a doorway and no fence. The building would consist of stone and painted shake style hardie board with a galvanized metal roof. There are two houses in the neighborhood with metal roofs and he plans to match the metal to the house that is the farthest north on the block.

Mr. White informed Mr. Stava that if he should need to go beyond the five year period being requested he would need to come back before the Board for permission of an extension. Mr. Stava stated that he was not aware of that until last evening.

Mr. White asked Mr. Stava if it would be a problem for him if the Board were to make a condition that at the end of a five year period the subject building were to be removed, if the Board approves today's request. Mr. Stava stated that at the end of Phase I there will be a pocket park that opens up to the neighborhood. That construction phase is expected to end in 2017. So the building would stay up to five years then be replaced by the pocket park.

BOA-21784 FILE COPY

Mr. Van De Wiele asked Mr. Stava if construction of Phase II were to start early what would happen to the building. Mr. Stava stated there will not be a requirement for as large a building for Phase II and Phase III so the construction office building will be scaled down.

Mr. Tidwell asked if the construction office building would be moved to a different location during Phase II and Phase III. Mr. Stava answered affirmatively.

Jana Monforte, 3041 South Boston Place, Tulsa, OK; stated she is thrilled about the park. She feels that GKFF has done a great job in keeping the neighborhood informed on what is going to happen. At times the residents are going to be frustrated but in the end there be a park right across the street from her house. Sometimes you must give up something to gain something.

Rebuttal:

Roy Johnsen came forward. The meeting last evening was packed and most of the people at that meeting are here today. The Board of Adjustment is dealing with two issues, Special Exceptions and Variances. The Board must find "by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship". It seems like this project is right on the money in a situation of an extraordinary circumstance. Many times a Variance being sought is a small thing but this project is a large thing. There is nothing else like this in the entire city. In Use Unit 2, it does not make any distinction from retail or industrial or office or any other category. It is a document that was written that says construction activities can be on site. This is far past that simplicity. For example, there is an office building on the north side of 31st Street and there is no parking on site. It is as good a neighbor as anyone can have. This company is going to do the best they can to keep the dust down and reduce the noise level. Use Unit 2 does not work for the present situation because it is a very large project that will take a very long to complete. The conditions for the hardship are met by looking at the facts. The neighbors have agreed with the proposal. There are provisions in Use Unit 2, i.e., the length of time is two years. That two year time limit simply will not work so a Variance is being requested. There is also a provision that within 100 feet the resident's permission must be received. That statement does not make sense, and the Board has the power to grant the Variance requested for that. In the zoning code there is a section that addresses the ingress and egress from a collector street, and that collector street is 31st Street. Section C under the Use Unit 2 states that a site shall not be located within 100 feet of an occupied dwelling without permission, but as a practical matter people will sign a statement such as that. Mr. Johnsen did say that the four residents that are within 100 feet of the project are in support of the project. A Use Unit 2 Special Exception in the residential district is one of the things the Board can approve. This project is in a residential district. In the zoning code it specifies certain things, i.e., maximum floor area ratio of .5, maximum lot size of 12,000 square feet, minimum frontage of 100 feet, a minimum building setback and these items simply cannot be met with the situation presented.

BDA-21784 FILE COPY

The lot is smaller than the 12,000 square feet. The minimum frontage of 100 feet is not there. That is why the Variance for those items has been requested.

Mr. Van De Wiele asked Mr. Johnsen to speak to the need of the size of the building. Mr. Johnsen stated there will be a lot of offices for meetings and the larger building will provide greater protection to the people to the north of the subject site. The contractor thinks the building size is appropriate for the leadership of the construction project.

Mr. Tidwell asked Mr. Johnsen if there would be work performed on the site on Saturdays. Mr. Johnsen stated there would be work all day during the daylight hours.

Comments and Questions:
Mr. Henke thinks there is a valid hardship for the Variance requests. The Special Exception clearly needs to be not detrimental to the neighborhood, and there will be arguments on both sides to that, but what has been discussed today is probably the most attractive temporary construction office building he has seen.

Mr. Van De Wiele agreed. Everyone is going to be inconvenienced to some degree. The closer one is the more inconvenience, and he certainly has already started looking for another route into downtown. When this project is finished it will be a great improvement and asset.

Mr. Tidwell agreed there is a valid hardship, and believes the Foundation will be responsive to problems that may arise during the construction.

Mr. White agreed with the other Board members. He would suggest that after the five year time frame is complete that the building be removed from the site. He understands the applicant has stated that the building would be removed but the Board has not stated that condition in a motion as of yet.

Board Action:
On **MOTION** of **VAN DE WIELE**, the Board voted 4-0-0 (Henke, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Snyder absent) to **APPROVE** the request for a Special Exception to permit offsite construction facililties (Use Unit 2) including staging and storage of construction equipment and materials (Section 401, Table 1 and Section 1202.B); Variance of 2-year time limitation on construction facilities to allow 5 years (Section 1202.C.4.a), with the condition that at the end of the five year period the construction office facility be removed; Variance to permit construction facilities to be located within 100 feet of an occupied dwelling without consent of the owner (Section 1204.C.4.c); Variance from the bulk and area requirements set forth in Section 404.F. The Board has found that the project in question is an exceptional size and undertaking as part of the City. The facilities to be constructed on the lot in question are located at the optimal and most efficient location to provide the least amount of detrimental impact. The applicant has agreed as part of the approval given today that the north and east side of the construction office will be covered by a stone and painted shake style hardie board siding as presented at today's meeting. The south and west sides of the building

BOA-21784 FILE COPY

will be of typical construction material and will not be required to be fenced. Also, along the north and east sides of the building there will be landscaping and plantings. The Board has found in conjunction with the Special Exception that the Special Exception 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. Finding by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

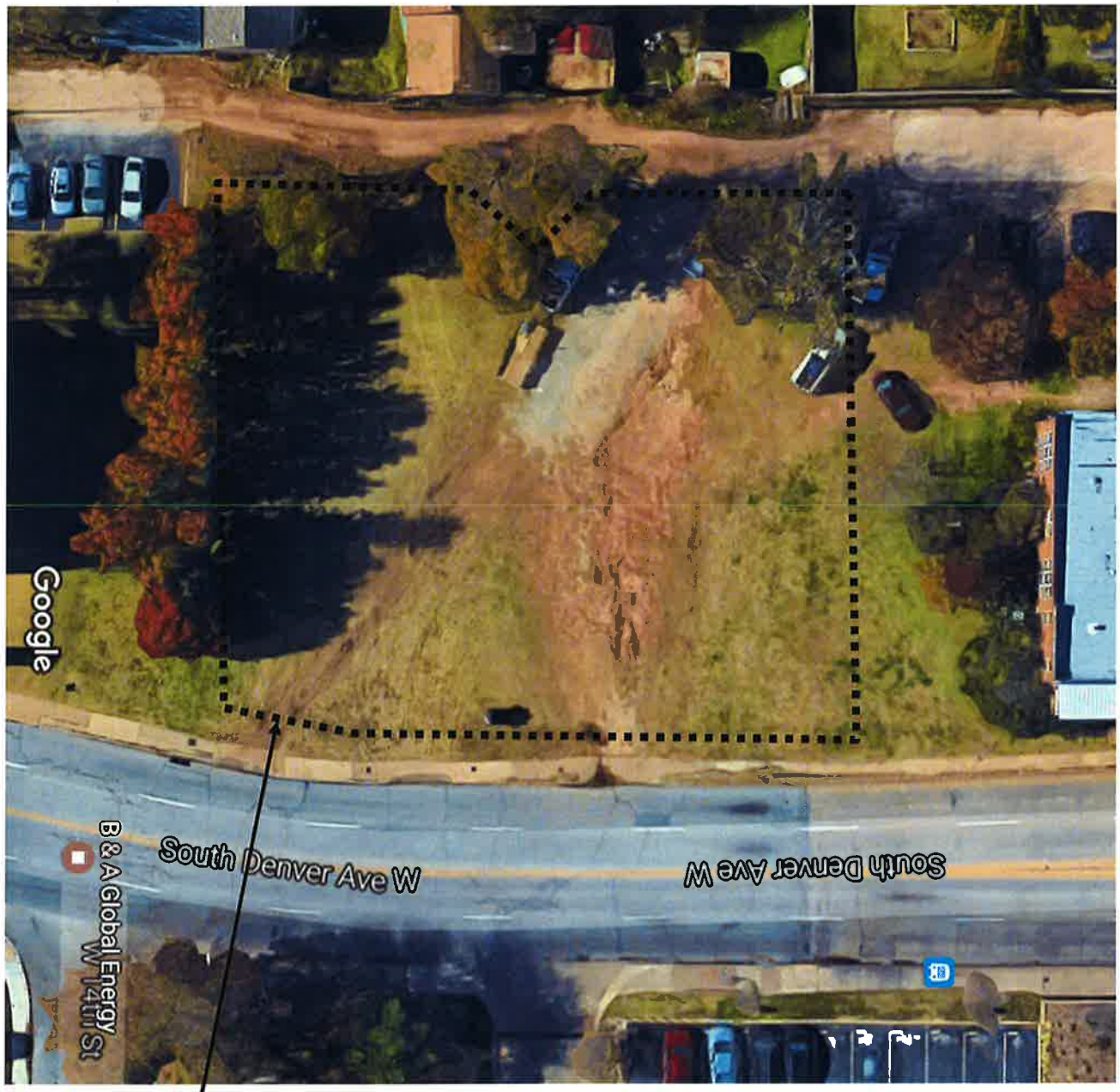
S17 LT 11 & ALL LT 12 BLK 11, TRAVIS PARK ADDN; ALL 3200 RIVERSIDE DRIVE ADDN; PRT GOV LT 1 & PRT NW NE BEG 24.7S & 410.6E NWC NW NE TH W481.57 SE303.97 TH ON RT CRV 236.89 SE104.61 E371.67 N635.3 POB SEC 24 19 12 6.22ACS, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

****

OTHER BUSINESS

Review and Approval of the 2015 City Board of Adjustment meeting dates.

On **MOTION** of **VAN DE WIELE**, the Board voted 4-0-0 (Henke, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Snyder absent) to **APPROVE** the 2015 City Board of Adjustment meeting date schedule provided with the exception of the removal of the November 24th meeting and the December 22nd meeting.



Six foot (6') open chain link fence around perimeter of all three (3) lots

Conceptual Site Plan for Cosmopolitan Apartments Storage and Staging Area

Summary of Special Exception Request
Cosmopolitan Apartments – Material Storage and Staging Area

The owner of the property located at the intersection of South Denver Avenue and Riverside Drive (the "Project Site") is developing that property in compliance with PUD No. 330 (as amended by PUD-330-A and PUD-330-A-1, collectively, the "PUD"). That project, known as the Cosmopolitan Apartments, is an infill development of new construction of upscale apartments and related accessory uses and amenities (the "Project").

In keeping with current building trends, City of Tulsa design and building guidelines and the PUD, the Project is being constructed as a "zero setback" development with the buildings and improvements constructed very near the adjacent streets. As such, the Project will be quite constrained in its ability to store and stage construction equipment and materials on the Project Site. Accordingly, the developer has leased three (3) contiguous lots located approximately five (5) blocks to the North of the Project Site at 1328, 1326 and 1322 South Denver Avenue (the "Subject Property") to temporarily store and stage such equipment and materials during the construction of the Project. For purposes related to the security of its equipment and materials, the developer has installed and will maintain during the temporary use of the Subject Property, a six foot (6') open chain link fence around the perimeter of the Subject Property.

Construction of the Project is anticipated to commence on or about March 1, 2017 and in anticipated to be complete by December 31, 2018. Within forty five (45) days of completion of the Project, the developer will remove all remaining items from the Subject Property, return the Subject Property to its previous condition, and remove the perimeter fencing from Subject Property.

The developer is requesting a Special Exception to allow the temporary storage and staging on the Subject Property of the construction equipment and materials necessary for the Project.

The developer believes that the Special Exception is in harmony with the spirit and intent of the zoning code as (i) it is a necessary and customary use related to the construction of the Project (similar to the temporary uses near the Gathering Place for storage and staging of trees, shrubs, construction equipment and construction trailers), (ii) such temporary uses are the ideal candidate for the Special Exception process, and (iii) a contrary result would frustrate the purposes underlying the PUD's development standards encouraging development nearer to the property lines.

Furthermore, the developer believes that the Special Exception will not be injurious to the neighborhood or otherwise detrimental to the public welfare as (i) the request is for a non-permanent / temporary period expiring December 31, 2018 (and will likely be in use for less than the full amount of that time period), (ii) the perimeter fencing will tend to prevent any passersby from unintentionally trespassing amongst the equipment or construction materials, and (iii) the portion of South Denver Avenue immediately contiguous to the Subject Property and the Project Site (from Riverside to the Broken Arrow Expressway) will be under construction (and widening in certain areas) in the same general time frame as the Project is under construction, which (along with the current diminished use of Denver due to Riverside Drive limited access) will tend to mitigate against any traffic issues or impact.

BOB KOLIBAS
ZONING OFFICIAL
PLANS EXAMINER
TEL 918-596-9664

DEVELOPMENT SERVICES

175 EAST 2nd STREET, SUITE 450
TULSA, OKLAHOMA 74103

ZONING CLEARANCE PLAN REVIEW

LOD Number: 984189-1

January 30, 2017

STUART VANDEWIELE
HALL ESTILL
320 S BOSTON AV STE 200
TULSA, OK 74103

Phone: (918)594-0816
Fax: (918)594-0505

APPLICATION NO: **8923** *(PLEASE REFERENCE THIS NUMBER WHEN CONTACTING OUR OFFICE)*
Location: **1326 S DENVER AV W**
Description: **TEMPORARY STORAGE AND STAGING OF CONSTRUCTION MATERIALS FOR PROJECT AT DENVER & RIVERSIDE (UNTIL 12-31-2018). PLAN IS TO PUT UP A 6 FT CHAIN LINK FENCE AROUND PROPERTIES: 1322, 1326 & 1328 S DENVER AV.**

INFORMATION ABOUT SUBMITTING REVISIONS

OUR REVIEW HAS IDENTIFIED THE FOLLOWING CODE OMISSIONS OR DEFICIENCIES IN THE PROJECT APPLICATION FORMS, DRAWINGS, AND/OR SPECIFICATIONS. THE DOCUMENTS SHALL BE REVISED TO COMPLY WITH THE REFERENCED CODE SECTIONS.

REVISIONS NEED TO INCLUDE THE FOLLOWING:

1. A COPY OF THIS DEFICIENCY LETTER
2. A WRITTEN RESPONSE AS TO HOW EACH REVIEW COMMENT HAS BEEN RESOLVED
3. THE COMPLETED REVISED/ADDITIONAL PLANS FORM (SEE ATTACHED)
4. BOARD OF ADJUSTMENT APPROVAL DOCUMENTS, IF RELEVANT

REVISIONS SHALL BE SUBMITTED DIRECTLY TO THE CITY OF TULSA PERMIT CENTER LOCATED AT 175 EAST 2nd STREET, SUITE 450, TULSA, OKLAHOMA 74103, PHONE (918) 596-9601.
THE CITY OF TULSA WILL ASSESS A RESUBMITTAL FEE. DO NOT SUBMIT REVISIONS TO THE PLANS EXAMINERS.

SUBMITTALS FAXED / EMAILED TO PLANS EXAMINERS WILL NOT BE ACCEPTED.

IMPORTANT INFORMATION

1. **SUBMIT TWO (2) SETS [4 SETS IF HEALTH DEPARTMENT REVIEW IS REQUIRED] OF REVISED OR ADDITIONAL PLANS. REVISIONS SHALL BE IDENTIFIED WITH CLOUDS AND REVISION MARKS.**

2. **INFORMATION ABOUT ZONING CODE, INDIAN NATION COUNCIL OF GOVERNMENT (INCOG), BOARD OF ADJUSTMENT (BOA), AND TULSA METROPOLITAN AREA PLANNING COMMISSION (TMAPC) IS AVAILABLE ONLINE AT WWW.INCOG.ORG OR AT INCOG OFFICES AT 2 W. 2nd ST., 8th FLOOR, TULSA, OK, 74103, PHONE (918) 584-7526.**

3. **A COPY OF A "RECORD SEARCH" [ ]IS [X]IS NOT INCLUDED WITH THIS LETTER. PLEASE PRESENT THE "RECORD SEARCH" ALONG WITH THIS LETTER TO INCOG STAFF AT TIME OF APPLYING FOR BOARD OF ADJUSTMENT ACTION AT INCOG. UPON APPROVAL BY THE BOARD OF ADJUSTMENT, INCOG STAFF WILL PROVIDE THE APPROVAL DOCUMENTS TO YOU FOR IMMEDIATE SUBMITTAL TO OUR OFFICE. (See revisions submittal procedure above.).**

5.22

(continued)

REVIEW COMMENTS

SECTIONS REFERENCED BELOW ARE FROM THE CITY OF TULSA ZONING CODE TITLE 42 AND CAN BE VIEWED AT WWW.CITYOFTULSA-BOA.ORG

Application No. 8923 1326 S DENVER AV W January 30, 2017

Note: As provided for in Section 70.130 you may request the Board of Adjustment to grant a variance from the terms of the Zoning Code requirements identified in the letter of deficiency below. Please direct all questions concerning variances, special exceptions, appeals of an administrative official decision, Master Plan Developments Districts (MPD), Planned Unit Developments (PUD), Corridor (CO) zoned districts, zoning changes, platting, lot splits, lot combinations, alternative compliance landscape and screening plans and all questions regarding (BOA) or (TMAPC) application forms and fees to an INCOG representative at 584-7526. It is your responsibility to submit to our offices documentation of any appeal decisions by an authorized decision making body affecting the status of your application so we may continue to process your application. INCOG does not act as your legal or responsible agent in submitting documents to the City of Tulsa on your behalf.
Staff review comments may sometimes identify compliance methods as provided in the Tulsa Zoning Code. The permit applicant is responsible for exploring all or any options available to address the noncompliance and submit the selected compliance option for review. Staff review makes neither representation nor recommendation as to any optimal method of code solution for the project.

Section 50.010 Description and Purpose

50.020-D Temporary uses that do not comply with all applicable regulations and all conditions of approval may be approved as special exceptions in accordance with Section 70.120. The development administrator is authorized to refer any temporary use to the board of adjustment for consideration in accordance with special exception procedures of Section 70.120.

Review Comments: The proposed Temporary storage and staging of construction materials off site in an OL/RM-2 zoning district for a construction project at Denver Avenue and Riverside Drive requires a special exception from the BOA.

This letter of deficiencies covers Zoning plan review items only. You may receive additional letters from other disciplines such as Building or Water/Sewer/Drainage for items not addressed in this letter.

A hard copy of this letter is available upon request by the applicant.

END – ZONING CODE REVIEW

NOTE: THIS CONSTITUTES A PLAN REVIEW TO DATE IN RESPONSE TO THE SUBMITTED INFORMATION ASSOCIATED WITH THE ABOVE REFERENCED APPLICATION. ADDITIONAL ISSUES MAY DEVELOP WHEN THE REVIEW CONTINUES UPON RECEIPT OF ADDITIONAL INFORMATION REQUESTED IN THIS LETTER OR UPON ADDITIONAL SUBMITTAL FROM THE APPLICANT.

KEEP OUR OFFICE ADVISED OF ANY ACTION BY THE CITY OF TULSA BOARD OF ADJUSTMENT OR TULSA METROPOLITAN AREA PLANNING COMMISSION AFFECTING THE STATUS OF YOUR APPLICATION FOR A ZONING CLEARANCE PERMIT.

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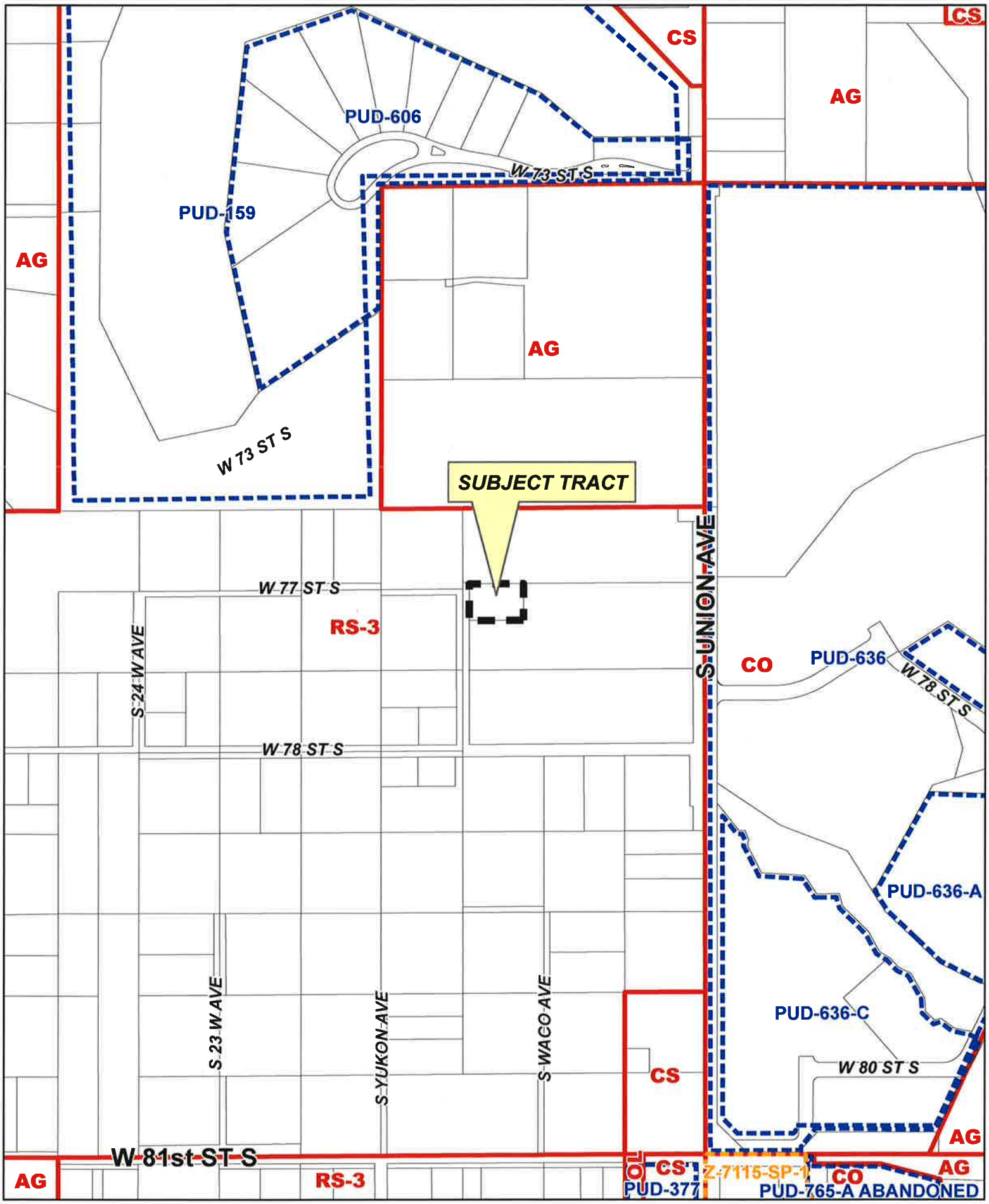

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BOA-22211

18-12 10

6.1

N

BOARD OF ADJUSTMENT
CASE REPORT

STR: 8210
CZM: 51
CD: 2
A-P#: n/a

Case Number: **BOA-22211**

HEARING DATE: 03/14/2017 1:00 PM

APPLICANT: Josh Miller

ACTION REQUESTED: Variance of the required rear setback in the RS-3 district from 20 ft. to 5 ft. (Section 5.030).

LOCATION: 7705 S Xenophon Avenue

ZONED: RS-3

PRESENT USE: Vacant residential lot

TRACT SIZE: 33,000.15 SQ FT

LEGAL DESCRIPTION: PRT NE SE BEG 309.74S & 746.86W NEC SE TH S150 W245 N150 E245 TO POB LESS W25 FOR RD SEC 10 18 12 .758AC, City of Tulsa, Tulsa County, State of Oklahoma

RELEVANT PREVIOUS ACTIONS:
None relevant.

RELATIONSHIP TO THE COMPREHENSIVE PLAN: The Tulsa Comprehensive Plan identifies the subject property as part of an "Existing Neighborhood" and an "Area of Stability".

The **Existing Residential Neighborhood** category is intended to preserve and enhance Tulsa's existing single family neighborhoods. Development activities in these areas should be limited to the rehabilitation, improvement or replacement of existing homes, and small-scale infill projects, as permitted through clear and objective setback, height, and other development standards of the zoning code. In cooperation with the existing community, the city should make improvements to sidewalks, bicycle routes, and transit so residents can better access parks, schools, churches, and other civic amenities.

The **Areas of Stability** includes approximately 75% of the city's total parcels. Existing residential neighborhoods, where change is expected to be minimal, make up a large proportion of the Areas of Stability. The ideal for the Areas of Stability is to identify and maintain the valued character of an area while accommodating the rehabilitation, improvement or replacement of existing homes, and small scale infill projects. The concept of stability and growth is specifically designed to enhance the unique qualities of older neighborhoods that are looking for new ways to preserve their character and quality of life. The concept of stability and growth is specifically designed to enhance the unique qualities of older neighborhoods that are looking for new ways to preserve their character and quality of life.

ANALYSIS OF SURROUNDING AREA: The subject tract is surrounded by RS-3 zoned residential lots.

6.2

STAFF COMMENTS:
The applicant is before the Board requesting a **Variance** of the required rear setback in the RS-3 district from 20 ft. to 5 ft. (Section 5.030) to permit new construction.

The applicant provided the following stament with their application: *"We have tried to mitigate the severe slope changes on the property with cutting and grading best as possible with existing soil material. The resulting building and pad is still to small to build a house, much less have any sort of yard without some relief from the rear (east) building setback requirement."*

The RS-3 district requires that the proposed dwelling maintain a 20 ft. rear setback in an attempt to establish and preserve development intensity and a uniform development pattern within the district. As the writing of this case report staff has not received any comments from surrounding neighbors or property owners.

Sample Motion for a Variance

Move to _____ (approve/deny) a Variance of the required rear setback in the RS-3 district from 20 ft. to 5 ft. (Section 5.030).

- Finding the hardship(s) to be_____.
- Per the Conceptual Plan(s) shown on page(s) _____ of the agenda packet.
- Subject to the following conditions _____.

The Board finds that the following facts, favorable to the property owner, have been established:

"a. That the physical surroundings, shape, or topographical conditions of the subject property would result in unnecessary hardships or practical difficulties for the property owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;

b. That literal enforcement of the subject zoning code provision is not necessary to achieve the provision's intended purpose;

c. That the conditions leading to the need of the requested variance are unique to the subject property and not applicable, generally, to other property within the same zoning classification;

d. That the alleged practical difficulty or unnecessary hardship was not created or self-imposed by the current property owner;

e. That the variance to be granted is the minimum variance that will afford relief;

f. That the variance to be granted will not alter the essential character of the neighborhood in which the subject property is located, nor substantially or permanently impair use or development of adjacent property; and

g. That the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of this zoning code or the comprehensive plan."

Feet
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Subject Tract

BOA-22211

18-12 10

Note: Graphic overlays may not precisely align with physical features on the ground.

Aerial Photo Date: February 2016

6.4

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Feet
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Subject Tract

BOA-22211

18-12 10

Note: Graphic overlays may not precisely align with physical features on the ground.

Aerial Photo Date: February 2016 6.5

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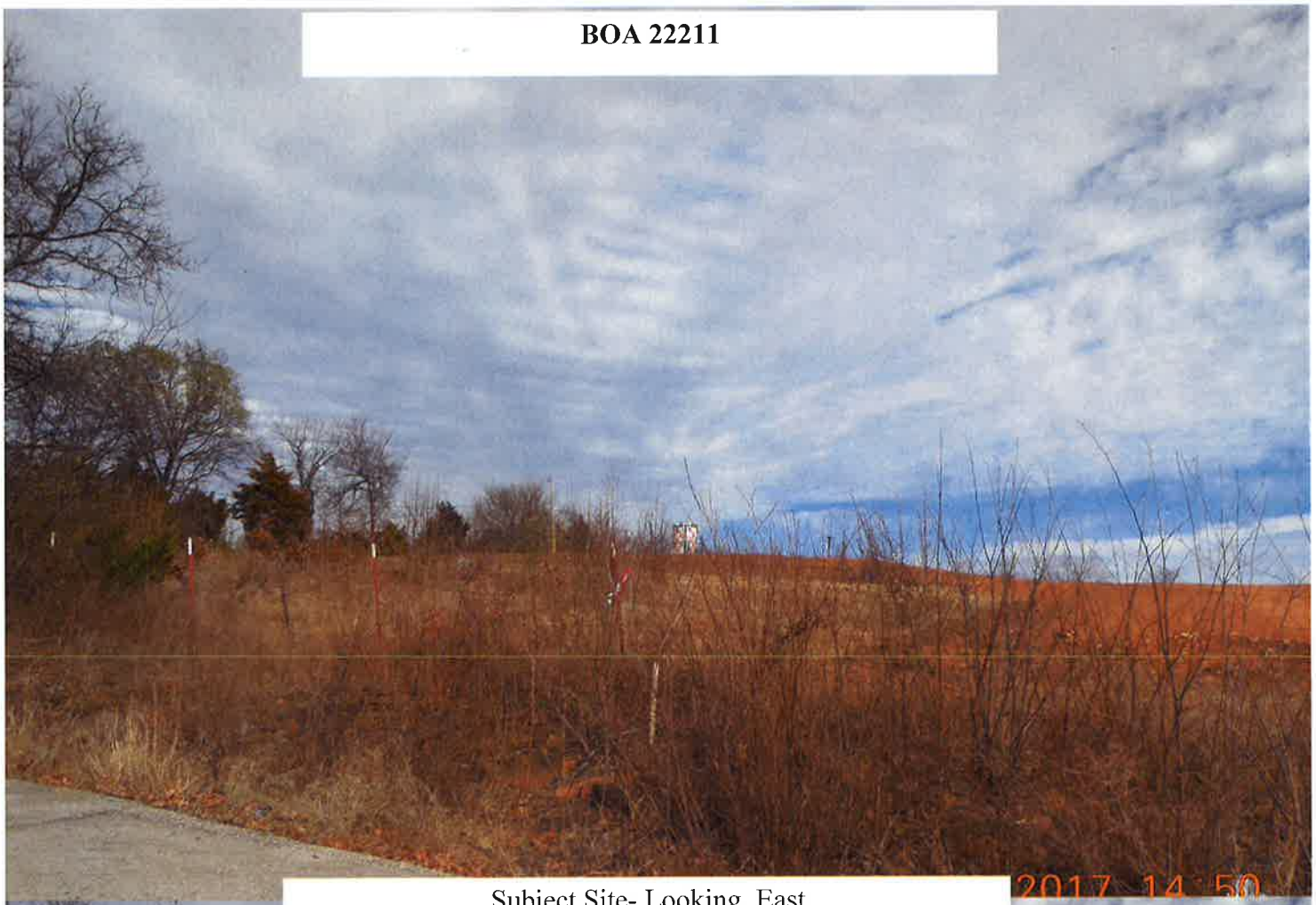
BOA 22211



Subject Site- Looking East

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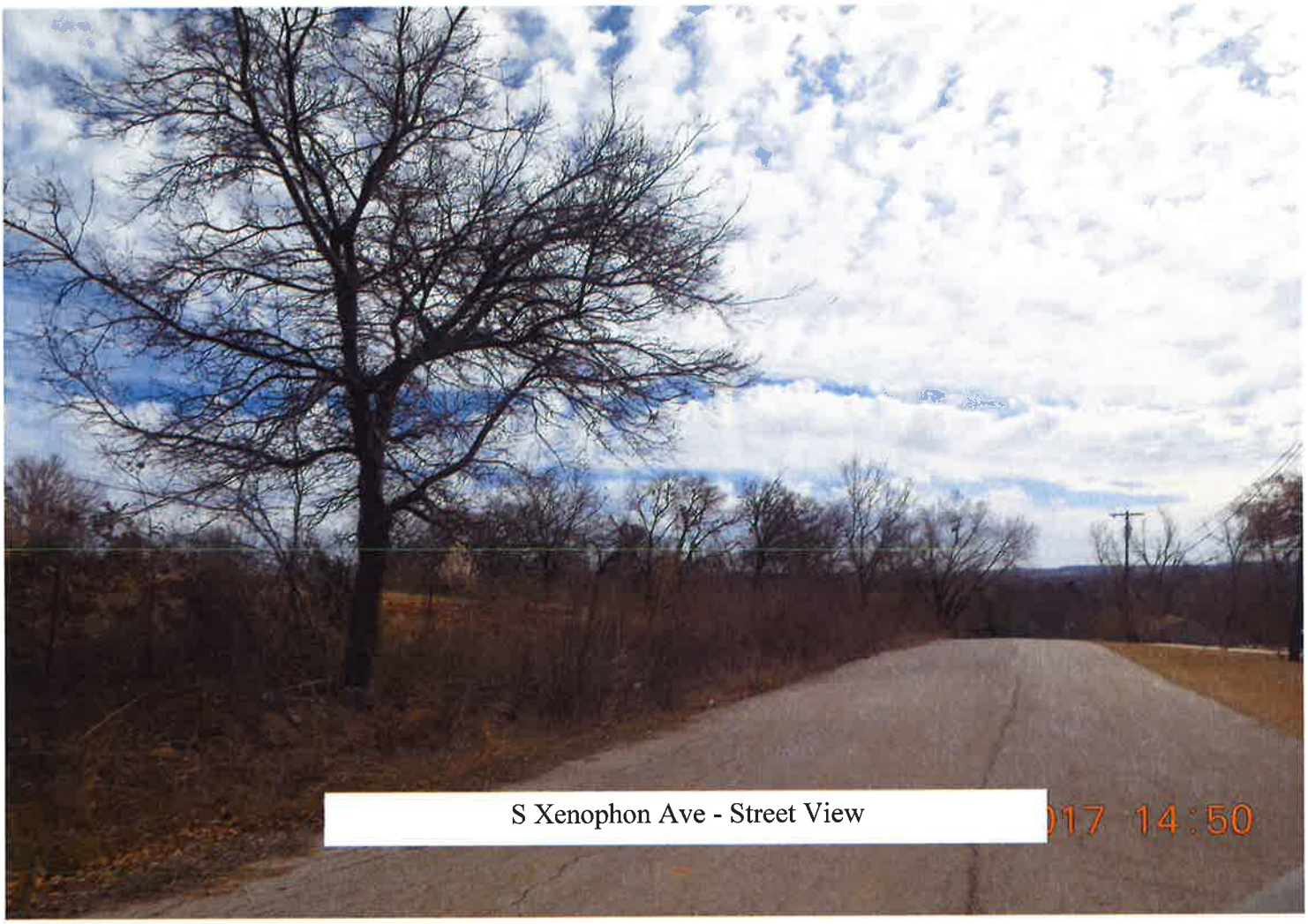

S Xenophon Ave - Street View

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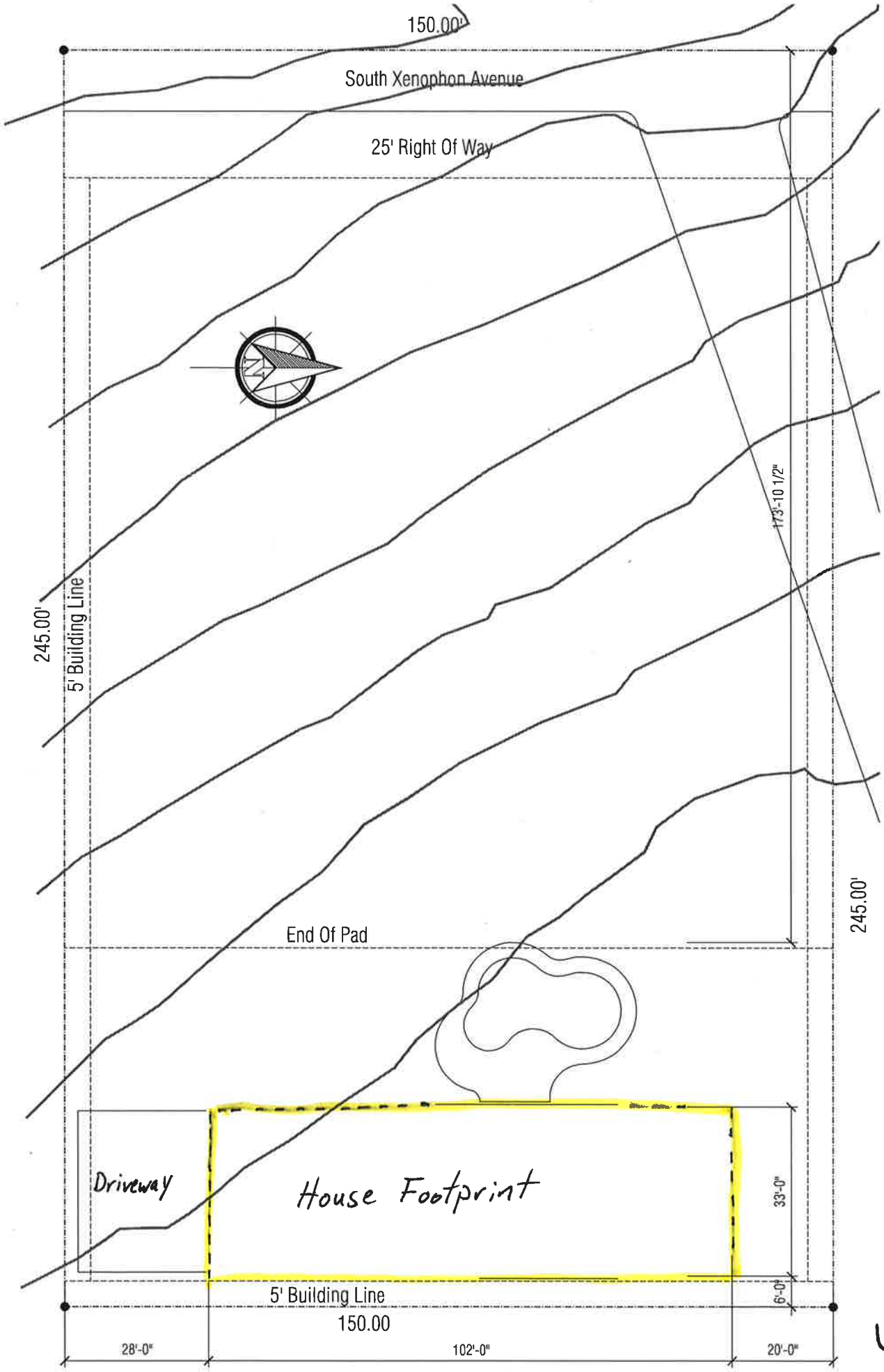
6.9

6.10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South Xenophon Avenue
25' Right Of Way
173'-10 1/2"
245.00'
5' Building Line
245.00'
End Of Pad
Driveway
House Footprint
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6'-0"
5' Building Line
150.00
28'-0"
102'-0"
20'-0"

6.11

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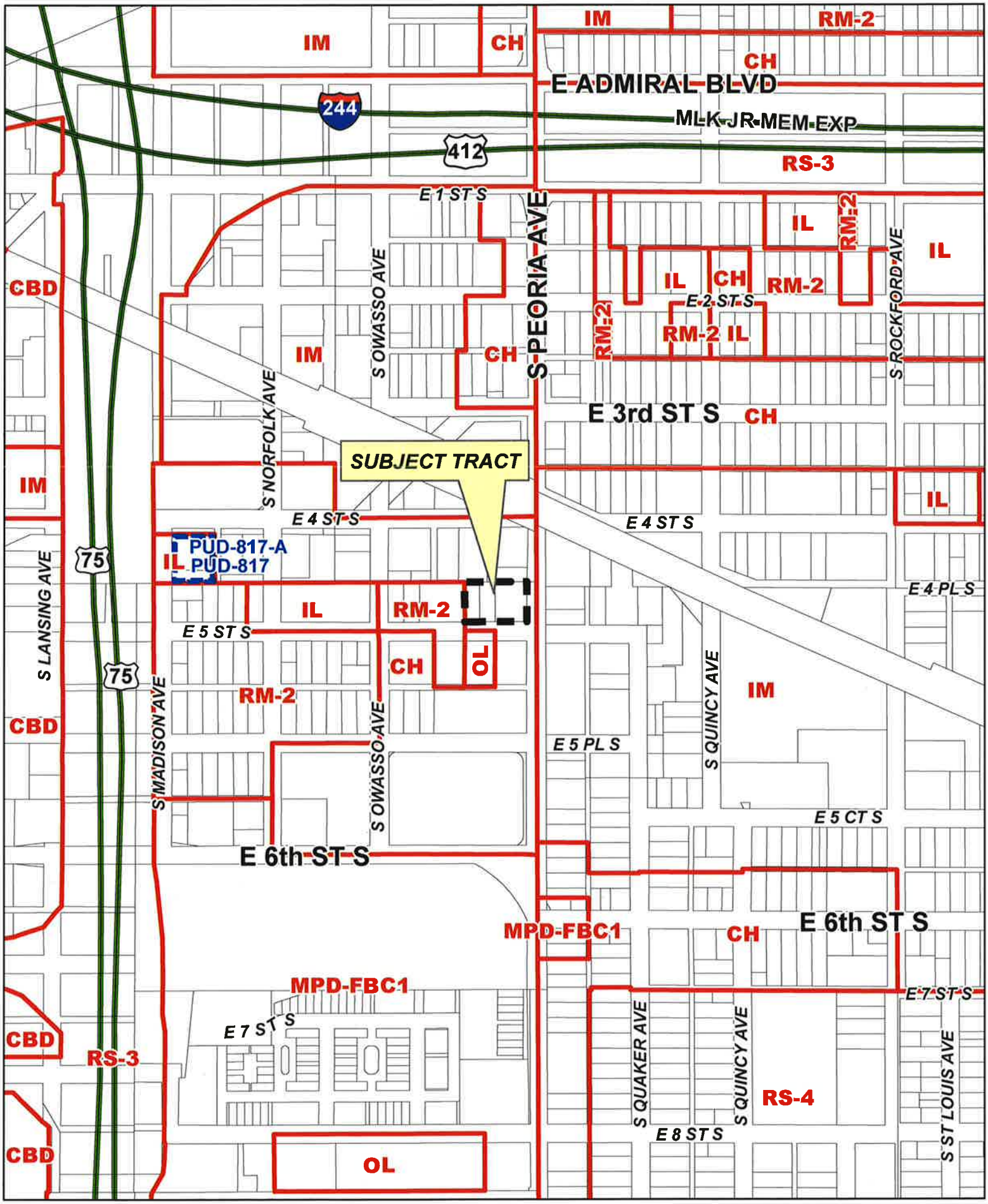

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BOA-22212

19-12 01

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N

BOARD OF ADJUSTMENT
CASE REPORT

STR: 9201
CZM: 36
CD: 4
A-P#: n/a

Case Number: **BOA-22212**

HEARING DATE: 03/14/2017 1:00 PM

APPLICANT: Joshua Ritchey

ACTION REQUESTED: Special Exception to permit low-impact manufacturing and industry (microbrewery) in the CH district. (Section 15.020)

LOCATION: 418 S PEORIA AV E

ZONED: CH

PRESENT USE: Commercial building

TRACT SIZE: 25874.75 SQ FT

LEGAL DESCRIPTION: LT 1-4 BLK 1, CENTRAL PARK PLACE, City of Tulsa, Tulsa County, State of Oklahoma

RELEVANT PREVIOUS ACTIONS:

Subject Lot:
BOA 21868; on 05.12.15 th Board **approved** a special exception to permit a food truck court and a outdoor event venue in the CH zoning district; variance of the allowable days for open air activities from 179 days to year round; and variance of the requirement that all motorized vehicles be parked on an all-weather surface to permit parking of food trucks on a gravel surface.

BOA 1330; on 06.25.1940 the Board approved a variance of the setback requirement along S Peoria Ave to permit construction of a 12' x 24' building.

RELATIONSHIP TO THE COMPREHENSIVE PLAN: The Tulsa Comprehensive Plan identifies the subject property as part of a "Downtown Neighborhood" and an "Area of Stability".

Downtown Neighborhoods are located outside, but are tightly integrated with the Downtown Core. These areas are comprised of university and higher educational campuses and their attendant housing and retail districts, former warehousing and manufacturing areas that are evolving into areas where people both live and work, and medium- to high-rise mixed use residential areas. Downtown Neighborhoods are primarily pedestrian-oriented and are well connected to the Downtown Core via local transit. They feature parks and open space, typically at the neighborhood scale.

The Land Use Category, **Area of Stability**, includes approximately 75% of the city's total parcels. The ideal for the Areas of Stability is to identify and maintain the valued character of an area while accommodating the rehabilitation, improvement or replacement of existing homes, and small scale infill projects. The concept of stability and growth is specifically designed to enhance the unique qualities of older neighborhoods that are looking for new ways to preserve their character and quality of life. The concept of stability and growth is specifically designed to enhance the unique qualities of older neighborhoods that are looking for new ways to preserve their character and quality of life.

7.2

ANALYSIS OF SURROUNDING AREA: The subject tract is abutted by CH zoning on the north; a OL and CS zoned church on the south; S Peoria Ave and IM zoning on the east; and RM-2 zoning on the west.

STAFF COMMENTS:

The Code defines a microbrewery as an establishment in which beer or malt beverages are made on the premises and then sold or distributed, and which produces less than 15,000 barrels (465,000 gallons) of beer and malt beverages per calendar year. Where allowed by law, microbreweries may include tasting rooms and direct sales to consumers in addition to other methods of distribution.

A Special Exception is required as the proposed microbrewery is a use which is not permitted by right in the CH district because of potential adverse affects, but which if controlled as to its relationship to the surrounding neighborhood may be permitted. Low-Impact Manufacturing and industrial uses are uses that do not, as part of their normal operations, generate noticeable off-site impacts in terms of noise, smoke, particulate matter, odors, or vibration.

The total parking requirement for the proposed use is two (2) on-site parking spaces. The Code permits nonresidential uses to count on-street parking spaces on public street rights-of-way abutting the subject property towards satisfying off-street vehicle parking requirements. All motorized vehicles must be parked on an all-weather surface therefore applicant will be required to pave the existing gravel off-street parking area shown on the attached plan.

Sample Motion for a Special Exception

Move to _____ (approve/deny) a Special Exception to permit Low-Impact Manufacturing and Industry in the CH district to permit a microbrewery (Section 15.020).

- Per the Conceptual Plan(s) shown on page(s) _____ of the agenda packet.
- Subject to the following conditions (including time limitation, if any):
  _____.

The Board finds that the requested Special Exception 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.

LT 40 & LTS 1-4 BLK 4 EISENHOWER ADD RSB,EISENHOWER ADD RSB L38&39&41-43&W/2L44 ALBERT PIKE SUB, ALBERT PIKE SUB, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21868—Joel Bein

FILE COPY

Action Requested:
Special Exception to permit a food truck court (Use Unit 2) and an outdoor event venue (Use Unit 20) in the CH District (Section 701, Table 1); Variance of the allowable days for open air activities from 179 days to year round (Section 1202.C.1); Variance of the requirement that all motorized vehicles be parked on an all-weather surface (Section 222). **LOCATION:** 418 South Peoria Avenue **(CD 4)**

Presentation:
Joel Bein, 418 South Peoria Avenue, Tulsa, OK; no formal presentation was made but the applicant was present for any questions.

Mr. White asked Mr. Bein what the results were with the meeting with the church because they were the primary questionable party at the last meeting. Mr. Bein stated that he and the church arrived at an agreement with the parking situation which was the grievance previously.

Mr. White asked Mr. Bein if his operation will be adversely affected by virtue of the agreement. Mr. Bein stated that it would not and he thinks it will work agreeably for everyone.

Mr. White asked Mr. Bein about the all weather surface for the parking. Mr. Bein stated that he hopes the Board will grant the Variance for the parking because the only vehicles to be parked on the gravel surface would be the food trucks.

Mr. White asked Mr. Bein about the driving access to the gravel area proposed for the food truck parking. Mr. Bein stated he would like to install a gate and have the trucks enter from western side.

Mr. Tidwell asked Mr. Bein who owned the property on the west side next to the proposed access. Mr. Bein stated that the church owns that property.

Mr. White asked Mr. Bein if there were any issues with the church concerning the hours of operation. Mr. Bein stated that there were not.

Mr. Henke asked Mr. Bein if the food trucks were going to come and go. Mr. Bein answered affirmatively. Mr. Bein stated the plan is to have some trucks for the lunch shift and different trucks for the dinner shift, while some of them may there for both shifts.

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BOA-21868

Mr. Henke asked the Board what the hardship for this request would be. Mr. Swiney stated the Code speaks about extraordinary or exceptional conditions or circumstances. Certainly this is a use that has never been tried before in Tulsa so the Board could say that is extraordinary or exceptional so the use itself is extraordinary or exceptional.

Interested Parties:
There were no interested parties present.

Comments and Questions:
Mr. Henke stated that he is in favor of this request.

Mr. Tidwell stated that he too is in favor of this request, because there needs to be something on the other side of the IDL in the Pearl District. This is a perfect opportunity.

Mr. White stated that realistically speaking this is the ideal geographic location to start off with this concept because of all the development happening downtown and in the Pearl District.

Board Action:
On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Special Exception to permit a food truck court (Use Unit 2) and an outdoor event venue (Use Unit 20) in the CH District (Section 701, Table 1); Variance of the allowable days for open air activities from 179 days to year round (Section 1202.C.1); Variance of the requirement that all motorized vehicles be parked on an all-weather surface (Section 222), subject to Conceptual Plan 3.7 with potential modifications as shown on the plan submitted today, May 12, 2015. Finding the Special Exception 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. Finding by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variances to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

LT 1, 2, 3, 4 BLK 1, CENTRAL PARK PLACE, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

****

UNFINISHED BUSINESS

FILE COPY

21868—Joel Bein

Action Requested:
Special Exception to permit a food truck court (Use Unit 2) and an outdoor event venue (Use Unit 20) in the CH District (Section 710, Table 1); Variance of the allowable days for open air activities from 179 days to year round (Section 1202.C.1); Variance of the requirement that all motorized vehicles be parked on an all-weather surface (Section 222). **LOCATION:** 418 South Peoria Avenue **(CD 4)**

Presentation:
Ms. Moye announced that an interested party in this case requested a continuance for this case via e-mail this morning. The interested party would like to have additional time to speak with the applicant about the parking issues.

Mr. Henke asked Mr. Bein to come forward and stated that the church would like to speak about parking issues. Mr. Henke stated that he knows Mr. Bein has not received all of the final approvals for the project and have been operating. Mr. Henke stated that he does not know what the church will be addressing in the way of parking issues.

Joel Bein, 2147 South Sandusky Avenue, Tulsa, OK; stated that he has been speaking with the church about what can be done. Mr. Bein stated that all that is required under Use Unit 20 per his application is 11 spaces, and that can be achieved in the front parking lot of the subject property. Currently the parking lot is gravel and that is the reason for the parking Variance request. He is confident that any issues can be worked through with the church. Mr. Bein stated that he has been working with the church about using the church parking lot that is located behind the subject property for additional parking.

Mr. Henke stated that there is a Special Exception request to permit the food truck park, and for the Board to be able to grant the Special Exception the Board would need to find that it is not injurious to the neighborhood. Parking and traffic issues would fall under that category.

Mr. Bein stated that he does not want to be injurious to the neighborhood either because they are trying to improve the neighborhood. The premiere weekend reception was wonderful. There were families and neighbors and everyone in attendance had a great time. Mr. Bein stated he is trying to build the food truck park up and make it a community spot, so he does not want to do anything detrimental to the neighborhood.

Mr. Henke asked Mr. Bein if he would be opposed to continue this case for another two weeks so there can further conversations with the church, or does he want to have the

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case heard today. Mr. Bein stated that he has been working on this project long and hard and he would like to go forward as soon as possible. Mr. Bein stated that if the Board approves the requests today there is still weeks of work to be done to get ready for the grand opening. Mr. Bein stated he would like to have the case heard today.

Comments and Questions:

Mr. White stated that he was in attendance of the premiere Saturday and it was a great success regardless of legalities and permits. Mr. White stated that he realizes the applicant is only required to have 11 parking spaces and they do comply with, but there were a whole lot of cars there parking in areas other than the streets and the other side of the property. Mr. White stated that he does not know if the church is the only one who is going to be voicing objections or not. There is nothing against the application itself but this is an issue that is definitely going to come before the Board.

Mr. Bein stated that once the food truck is approved he plans on placing signs everywhere stating "Park Parking Only" for the subject property. Mr. Bein stated that he can reach an agreement with the church to use the back lot then that would give plenty of parking spaces with the parking on the street or lot.

Mr. White stated that people ususally lose their ability to read when they are in situations like Saturday's event. Mr. White stated that Mr. Bein has a good case to present to the Board, but beyond that it would be great to have an agreement with the neighboring property owners to use their facilities. Mr. Bein stated that Saturday's event was an exception because there were bands and it was open all day, but it will not be that way on a daily basis.

Mr. Van De Wiele asked staff if there were indications received from the church that there were other issues other than just the parking. Ms. Moye stated the church did not identify what the issues are, but they did speak about the parking issues.

Mr. Van De Wiele asked Mr. Bein if it was his desire to reach an agreement with the church. Mr. Bein answered affirmatively. Mr. Bein stated that before the lease was signed with the property owner he wanted to address the church first so everything could proceed. Mr. Bein stated that he had spoke with the church again last week about using the back lot to avoid using the regular church lot. Mr. Van De Wiele stated that to him it sounds like reaching an agreement is necessary but there is not one in place currently, and it would make sense to continue this case to the next meeting.

Mr. White stated the additional parking is not one of the conditions of the application. Mr. White asked Mr. Swiney if that is something that needs to be added to the application. Mr. Swiney stated that if the Board feels parking needs to be addressed in the vote then it should be done.

Mr. Van De Wiele asked Mr. Bein if he thought he would be able to get the parking issues resolved in the next two weeks. Mr. Bein stated that he thought they could be resolved.

BOA-21868

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Interested Parties:

Milford Carter, 1228 East 5th Street, Tulsa, OK; stated he is the Senior Pastor of Sanctuary Avengelistic Church. Mr. Carter stated that the church properties are contiguous to every area of the subject property and their event. The western and southern areas of the subject lot are bordered by the parking lots. Mr. Carter stated he has worked in the neighborhood for the last 15 years and all the meetings for the Pearl District and Sixth Street Task Force were held in the church. The church is definitely in the growth and development of the area. It is a very good thing that Mr. Bein is doing but the issue is the church wants it to be something that works for the church as well as it works for him. In regards to the event held over the weekend, the church parking lot was jammed and the area across the street was jammed, and that is wonderful. But the thing is it has to be mutually beneficial in the sense of time and any kind of compensation. In addition to the parking, Mr. Bein has spoke to the church about utilizing the church's kitchen which there has not been a determination arrived at. These are issues that the church would like to have resolved before the food truck park gets started. Mr. Carter stated that a mutual understanding can be worked out that is mutually beneficial to everybody. Mr. Carter stated that the food truck park is proposing to operate six or seven days a week, and if there is a funeral with 300 people in attendance and the food truck park is operating simultaneously that is going to be a problem. Mr. Carter stated that the thinks the church has ample space to make these things work. The church has a parking lot that is considerable and then there are three other lots next to the food truck park that are on the western side of the subject property that can be made available. Mr. Carter stated that they just need time to work it out and time to have an agreement that makes everyone continue to be good neighbors.

Mr. Van De Wiele asked Mr. Carter if he would be agreeable to a two week continuation. Mr. Carter stated that would be plenty of time. Mr. Van De Wiele stated that he thinks this case needs to be continued.

Josh Ritchey, P. O. Box 2065, Tulsa, OK; stated he is the property owner. Mr. Ritchey stated that, in his opinion, the issue is this is the future of Tulsa. This is what the world is going to be like. It is going to be crowded. People are going to have to learn to walk. If the church parking lot was roped and never used again people will have to figure it out. In his opinion, that if Mr. Bein is willing to run a business with the risk that people might only have 11 parking spaces, what is available on the street and what is available at Centennial Park or in neighborhoods all around, or running a shuttle from TU, as business owners they should be allowed to do whatever they want within the guise of running their business and parking be danged.

Mr. Van De Wiele stated that he agrees with Mr. Ritchey but that is why he asked the question of how important was the relationship with the church to this request. Mr. Van De Wiele stated that he heard the applicant does view it as important.

Mr. Ritchey stated that he believes the applicant views it as important because it is the path of least resistance. There are empty lots all over the subject area if the agreement

MINUTES OF A REGULAR MEETING OF THE BOARD OF ADJUSTMENT, TUESDAY, JUNE 25, 1940.

PRESENT: Newlin, Chairman; Wooten; Borochoff; Deaton; McCain.

Minutes of the previous meeting read and approved.

Case No. 1330
Paul A. Wilson
Lot 1, Block 1,
Central Park Pl.

Paul A. Wilson requests waiver of set-back requirement on Peoria Avenue to permit erection of a 12x24 Frame building on Lot 1, Block 1, Central Park Place Addition, being the Northwest corner of Fifth Street and Peoria Avenue.

MOVED by Borochoff (Deaton) that permit be granted, subject to the execution of the usual set-back contract. Roll call - All members voting yes. Carried.

Case No. 1331
Minnie B. Bowen
Lot 52, Block 3,
Orchard Addition

Minnie B. Bowen applies for waiver of set-back requirements on Eleventh Street to permit erection of a frame building to the property line at the Southeast corner of Eleventh Street and Quaker Ave.

MOVED by Deaton (Borochoff) that permit be granted for the erection of a building to within approximaterly five feet of the property line, same being in line with the building to the east; subject to the usual set-back agreement. Roll call - All members voting yes. Carried.

Case No. 1332
Silver Castle
Lunch System
Lot 1, Blk 113,
Original Townsite

Silver Castle Lunch System requests waiver of set-back requirements on Fourth Street to permit the erection of an all-steel building on Lot 1, Block 113, Original Townsite, 5-1/2 feet over the established set-back line.

Also, under provisions of Ordinance No. 4323, requests waiver of Building Code requirements governing size of building of Class "5" type of construction to permit erection of a building of 756 square feet in area, same to be located at the Northwest corner of Fourth Street and Kenosha Avenue.

MOVED by Wooten (McCain) that permission be granted for the erection of a building in excess of 400 square feet, as above mentioned, and that set-back requirements be modified, subject to the usual contract provided for in such cases. Roll call - All members voting yes. Carried.

Adjourned:

Ray L. Sherman
Secretary

APPROVED:

Arthur Newlin
Chairman

Feet
0 200 400

Subject Tract

BOA-22212

19-12 01

Note: Graphic overlays may not precisely align with physical features on the ground.

Aerial Photo Date: February 2016 7.10

N

Feet
0 50 100

Subject Tract

BOA-22212

19-12 01

Note: Graphic overlays may not precisely align with physical features on the ground.

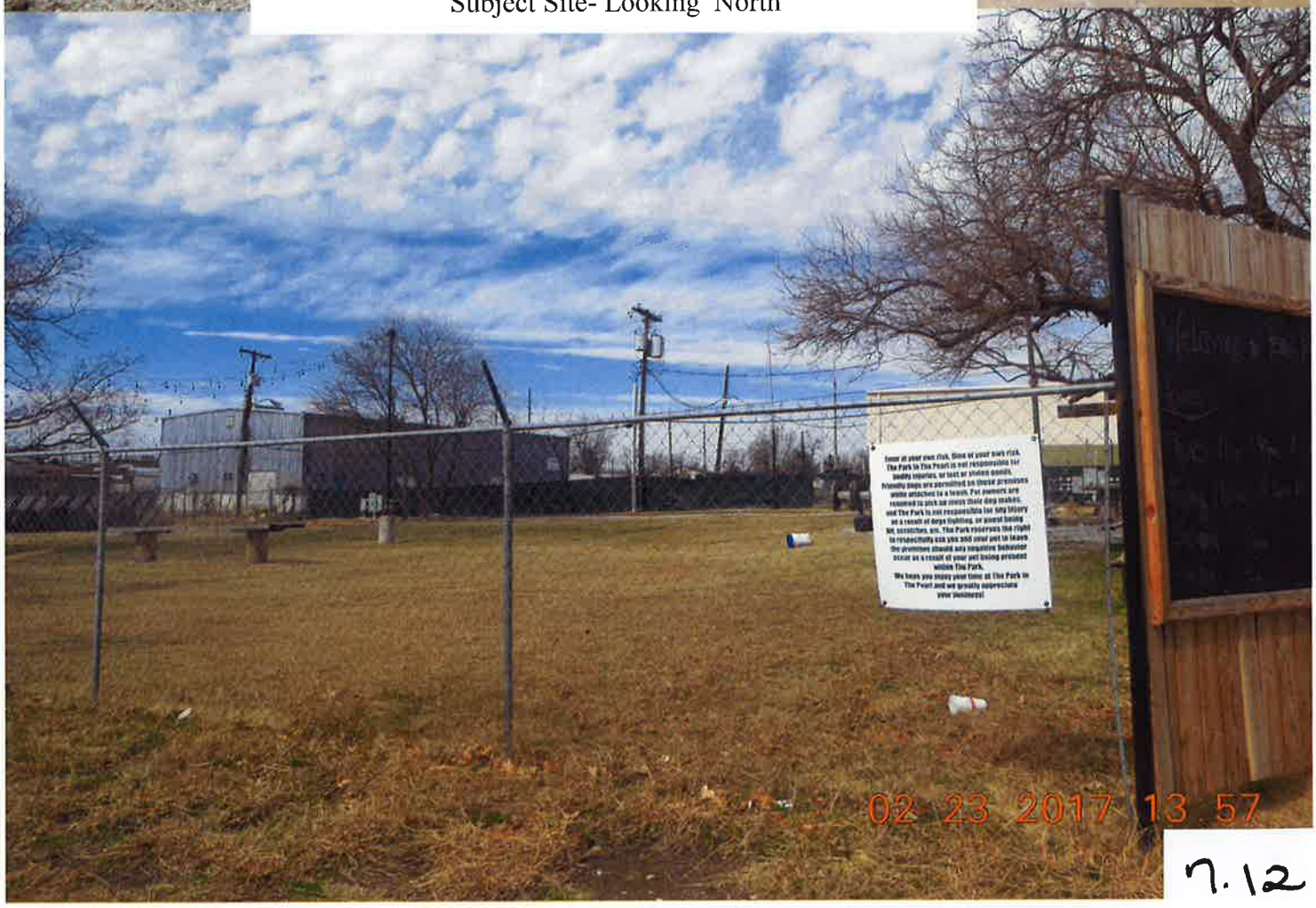
Aerial Photo Date: February 2016

N

7.11

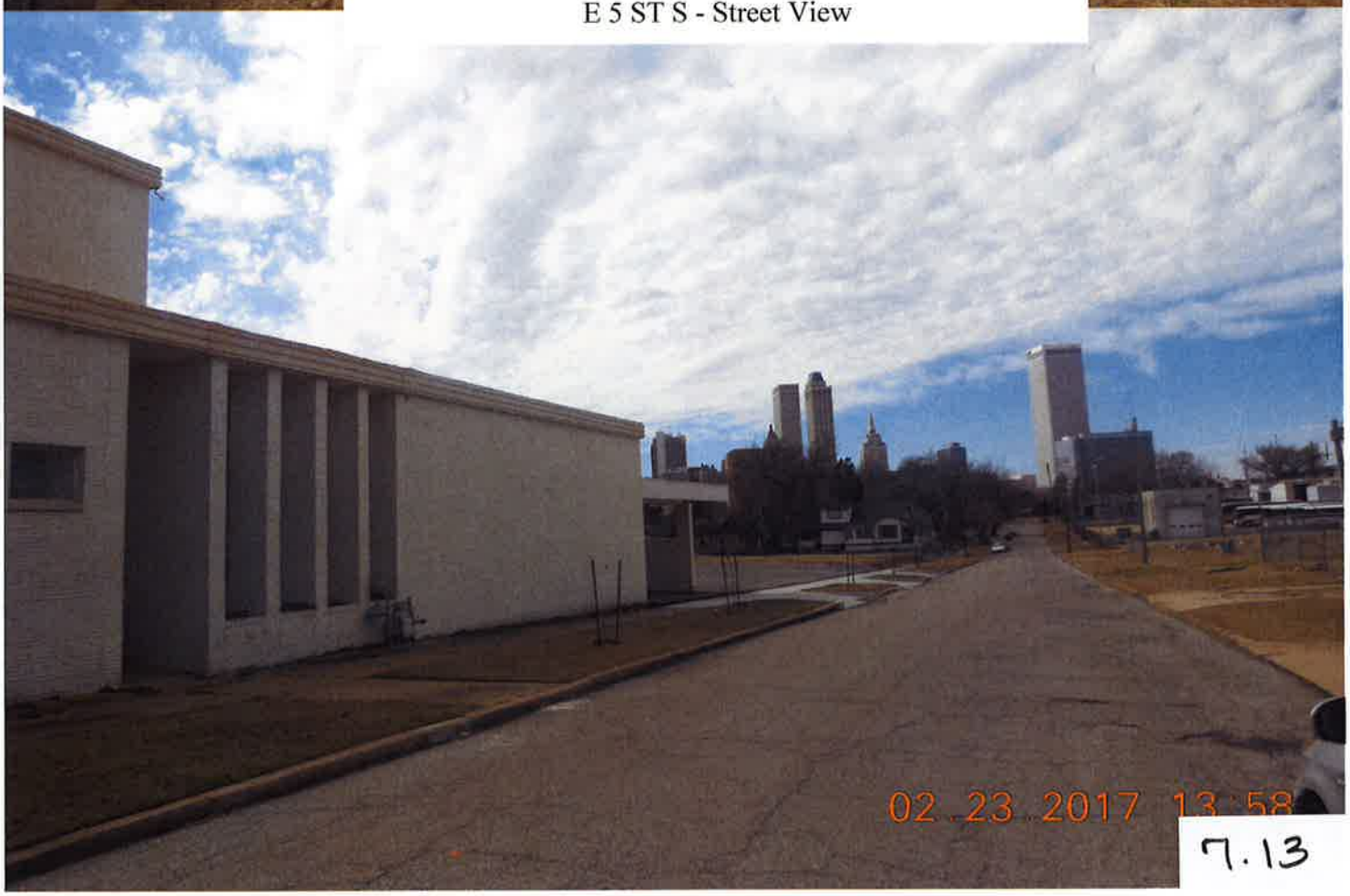
BOA 22212

Subject Site- Looking North

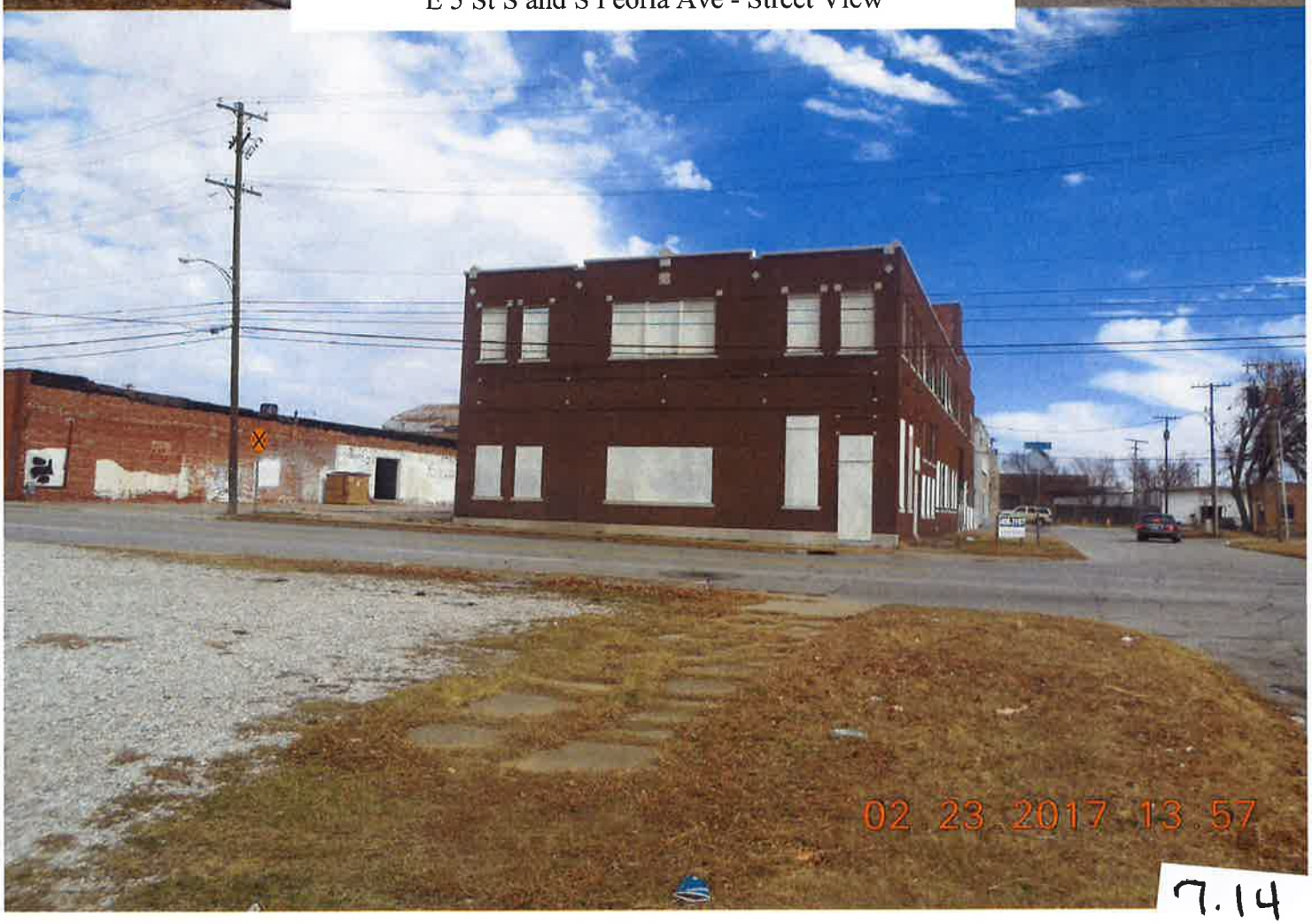


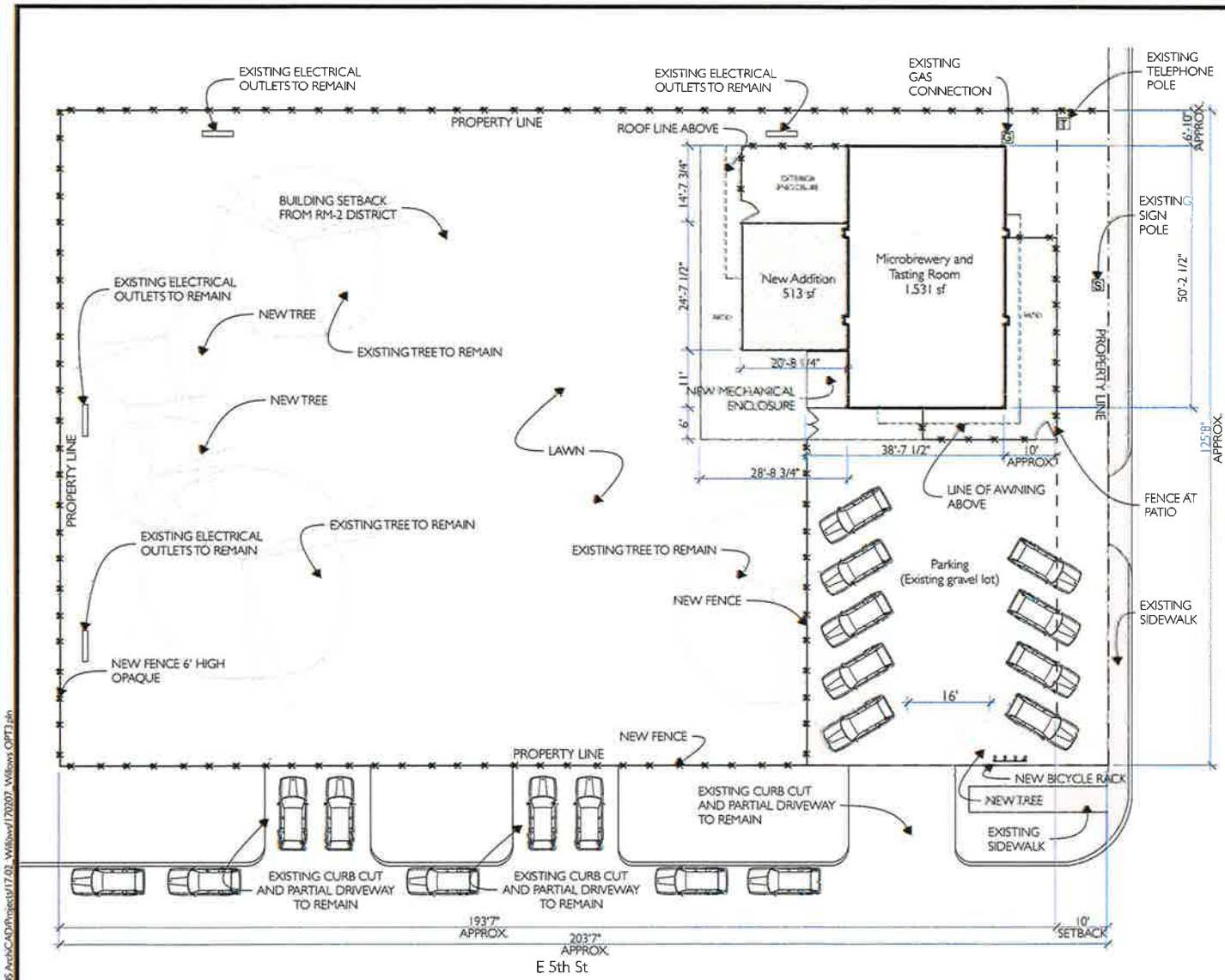
7.12

E 5 ST S - Street View



E 5 St S and S Peoria Ave - Street View





1 ARCHITECTURAL SITE PLAN
SCALE: 1" = 20'

Zoning Code Notes:

Building Area: 2,044 square feet
Property District: CH
Abutting Districts: RM-2 on west side

Use Category: Industrial (35.020-A)
Building Type: Low-impact Manufacturing and Industry (35.070-A), allowed by special exception in CH district (Table 15-2).

Fencing Requirements: Screening fence, six (6) feet tall opaque required on west property line with at least two (2) trees (40.180-A, 65.060-C2).

Minimum Parking Ratios: Low-impact Manufacturing and Industry in a CH district, 0.85 spaces per 1,000 square feet (Table 55-1).
Required parking: 2 spaces
(2,044 SF / 1,000 SF) x 0.85 = 1.6

Provided parking: 15 spaces on site
On-Street Parking: 5 spaces along E 5th street
Short-term bicycle parking provided

Setbacks: N/A in CH district (Table 15-3)

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CONSULTANTS

STATE OF OKLAHOMA
4079
LICENSED ARCHITECT
02/19/17

PROJECT INFORMATION:
Willows Family Ales
418 S Peoria Ave
Tulsa, OK 74120

OWNER INFORMATION:
Willows Family Ales: Pearl District, LLC
418 S Peoria Ave
Tulsa, OK 74120

NO.	DATE	DESCRIPTION
01	2/9/17	BOA SUBMISSION

PROJECT NO: E7-02

SHEET TITLE
ARCHITECTURAL SITE PLAN

AS101

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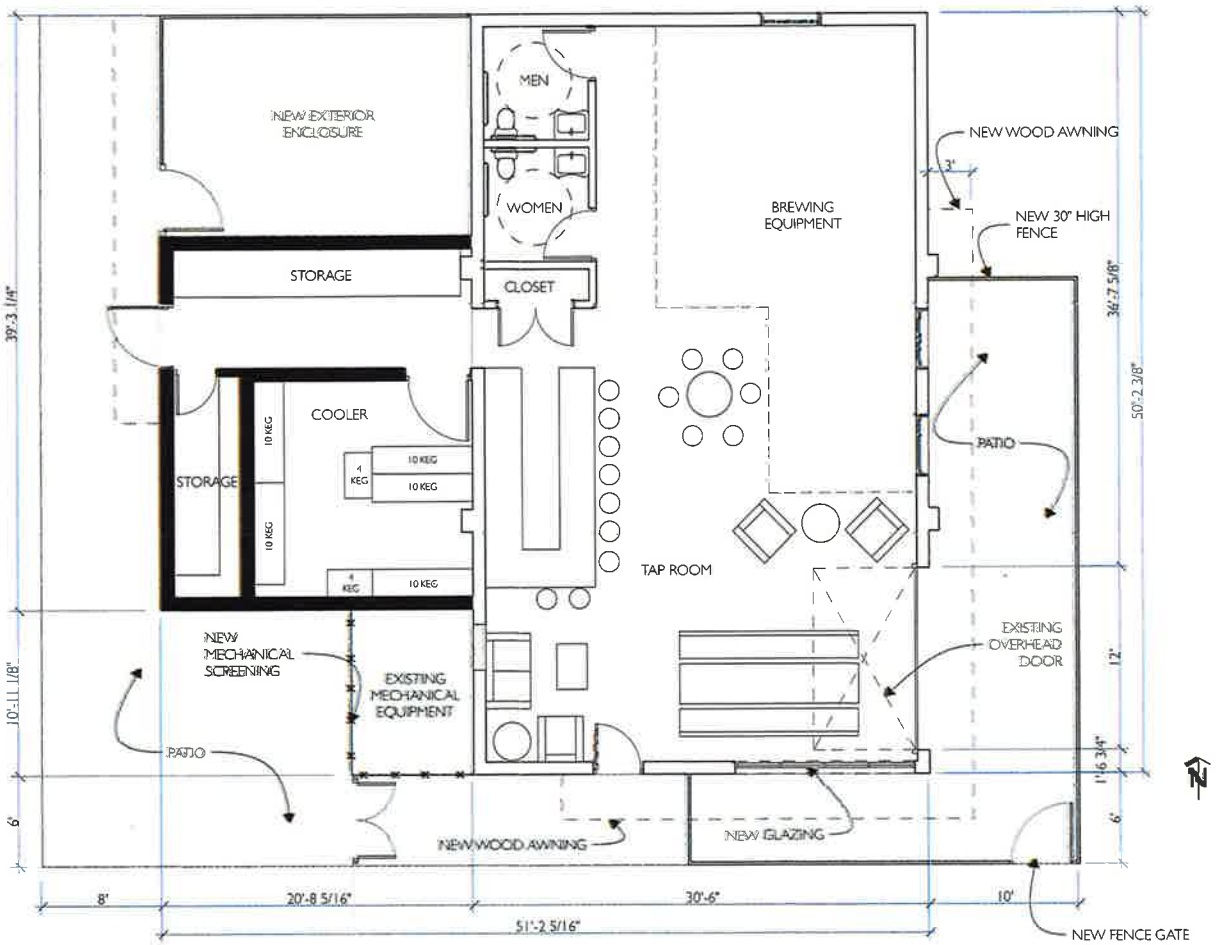

1 1st FLOOR PLAN
SCALE: 1/8" = 1'-0"

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CONSULTANTS

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PROJECT NO: 17-02

SHEET TITLE
1st FLOOR PLAN

A-101

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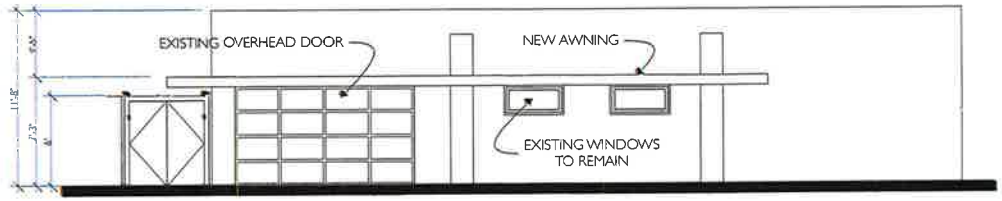
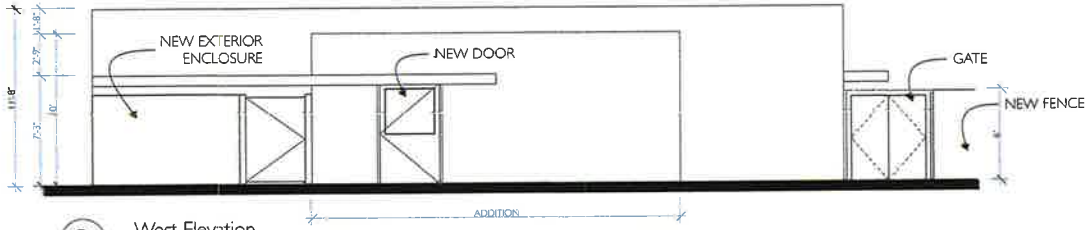


1 East Elevation
SCALE: 1/8" = 1'-0"



2 West Elevation
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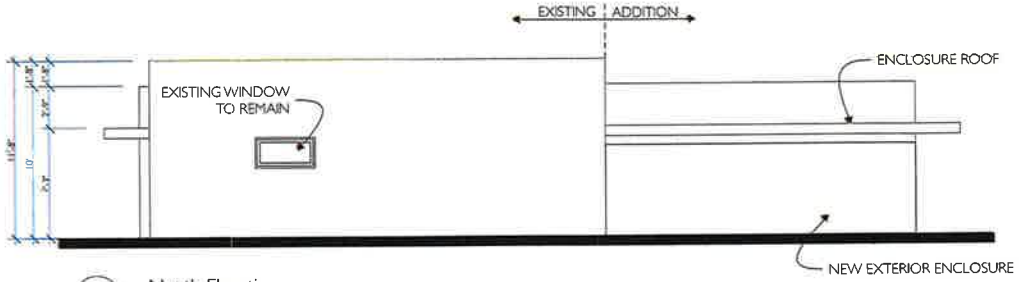
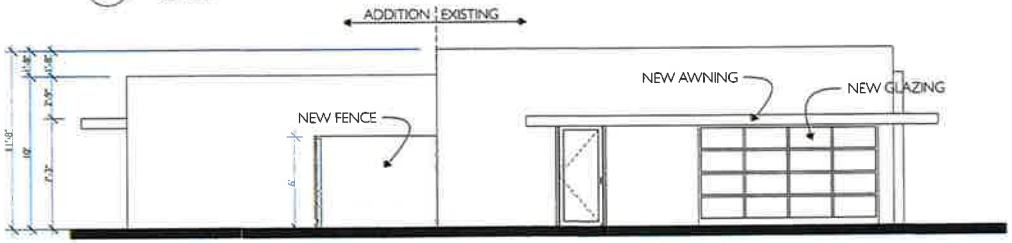


3 North Elevation
SCALE: 1/8" = 1'-0"



4 South Elevation
SCALE: 1/8" = 1'-0"

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CONSULTANTS

STATE OF OKLAHOMA
JONES
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02/09/17

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Tulsa, OK 74120

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NO.	DATE	DESCRIPTION
01	2/9/17	BOA SUBMISSION

PROJECT NO: 17-02

SHEET TITLE
ELEVATIONS

A-201

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