

**CITY BOARD OF ADJUSTMENT**  
MINUTES of Meeting No. 952  
Tuesday, March 13, 2007, 1:00 p.m.  
Francis F. Campbell City Council Room  
Plaza Level of City Hall  
Tulsa Civic Center

**MEMBERS  
PRESENT**

White  
Henke, Chair  
Stead, Vice Chair  
Stephens  
Tidwell, Secretary

**MEMBERS  
ABSENT**

**STAFF  
PRESENT**

Alberty  
Butler  
Cuthbertson

**OTHERS  
PRESENT**

Ackermann, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Thursday, March 8, 2007, at 12:48 p.m., as well as at the Office of INCOG, 201 W. 5<sup>th</sup> St., Suite 600.

After declaring a quorum present, Chair Henke called the meeting to order at 1:01 p.m.

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

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**MINUTES**

On **MOTION** of **Tidwell**, the Board voted 5-0-0 (White, Henke, Stead, Tidwell, Stephens "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** the Minutes of February 27, 2007 (No. 951).

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**REQUEST TO CONTINUE AND CASES TO WITHDRAW**

**Case No. 20449**

**Action Requested:**

Interpretation of the Zoning Code to determine if digital display billboards are compliant with Sec 1221.F.8 & 14; or in the alternative a Variance of the requirement that no billboard contain flashing or blinking lights (Section 1221.F.8) and a Variance of the requirement that illumination of an outdoor advertising sign

be illuminated by constant light (Section 1221.F.14), located: 3003 East 51<sup>st</sup> Street South.

**Presentation:**

Mr. Cuthbertson stated the applicant withdrew this case.

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**UNFINISHED BUSINESS**

**Case No. 20367**

**Action Requested:**

Appeal the determination of the Tulsa Preservation Commission to deny a Certificate of Appropriateness application issued on September 20, 2006, located: 312 East 20<sup>th</sup> Street South.

Ms. Stead asked that this case and BOA Case No. 20437 be heard concurrently. Mr. Cuthbertson reminded the Board that Case No. 20437 is the same application except the same applicants, Scott and Christine Lambert, are appealing a latter determination of denial of a certificate of appropriateness, which was issued on January 11, 2007.

**Presentation:**

**Lou Reynolds**, 2727 East 21<sup>st</sup> Street, represented Chris and Scott Lambert. He stated this case has taken an emotional overtone that does not have anything to do with the facts or the rules. He added that the Lamberts did not knowingly commence this expensive project and ignore the rules. They previously did a large addition to the home and complied with the rules. Mr. Reynolds reviewed the zoning code, Section 1055.C. statement that provides for the Preservation Commission to measure the appropriateness or inappropriateness of such projects. He also reviewed the Maple Ridge Design Guidelines (Exhibit A-2) and responded to each item, stating they complied with all but two. The Lamberts needed windows that open and close and provide security and safety. He referred to the letters from S.R. Hughes, which stated, "the windows and doors are of the highest quality, are extremely energy efficient and will protect the structure of the house..." (Exhibit A-3). He pointed out that only three of the windows would open only six inches and all of the others were nailed, painted or caulked shut. They needed all the windows to be operative in case of an emergency. Mr. Reynolds noted there are 153 homes in Maple Ridge with casement windows; 94 homes with fully-divided light windows; and 123 homes with storm doors and sixteen homes that don't have anything but storm windows, as shown in the photographs submitted (Exhibit 1). John Brooks Walton wrote a letter stating it does not destroy or alter any of the historic residence (Exhibit A-3). Mr. Reynolds stated it does not isolate the residence from the neighborhood or make it out of character to the neighborhood.

**Interested Parties:**

**Jim Turner**, Chair of the Tulsa Preservation Commission, stated the reason the Lambert's windows were not approved is because they do not meet the design guidelines for the neighborhood, A1.2.1, A1.2.3 and A1.2.4. He added they judge each submission on their own merit. The replacement windows should match the characteristics of the windows that are being replaced. Ms. Stead asked if he was indicating that all of the abnormal doors and windows happened before the TPC came into existence. He was not comparing this project to other houses in the neighborhood. Some houses had casement windows originally. The Lamberts had 16/1 double-hung wood windows with sixteen divisions on the upper sash and no divisions on the lower sash. He stated the front door does not meet the guidelines.

**Roger Goodhead**, 12 East 25<sup>th</sup> Street, President of the Maple Ridge Neighborhood Association, referred to the letter from Paul Gilling (Exhibit A-3). He felt it summarized the TPC position. Mr. Goodhead expressed concern that it would set a precedent.

**Susan McKey**, 1616 South Victor, President of the Coalition of Historic Neighborhoods, stated she represented the neighborhoods on the HP Overlay and the National Register. The guidelines are to keep the look of the neighborhood the same. Mr. Henke asked if she found the windows to be architecturally offensive for the neighborhood. She replied for the neighborhood, maybe not, for the house, possibly, yes.

Mr. Henke referred to the January 11, 2007 TPC meeting minutes. He asked Mr. Turner about his statement regarding the appearance, character defining elements and the guidelines. Commissioner Gilmore stated, "This Commission has approved in the past casement windows to be installed where double-hung windows were, however the owner was going to put in extra-heavy Muntin with that window to make it appear to be a double-hung window. He stated that a casement window could be used if we could make it look like a double-hung window. Commissioner Gilmore stated that this is another instance where it is not exactly the same but it is similar." Mr. Turner replied that he was not aware of which instance Mr. Gilmore was talking about but that is a definite possibility if they were able to make the casement windows appear to be double-hung windows by addition of mullions or heavier mullions in certain areas. Mr. Henke asked was it still his opinion that the replacement windows in this case are inconsistent for this house. Mr. Turner replied that is not what the TPC is saying, but the replacement windows do not meet the guidelines for replacement windows in an existing structure in North Maple Ridge, because of the way the guidelines are written. The guidelines say the glazing, appearance, trim, muntin pattern has to be similar in design to the original window to be approved as a replacement window. He stated these windows are as different from a double-hung 16/1 window as they can be.

**Comments and Questions:**

Ms. Stead asked if their Board does not have the ability to deviate in small ways from the guidelines. Mr. Turner replied there are areas of the guidelines that are open to interpretation but they try to stay with the guidelines and cite the sections of the guidelines they use for approval and denial of the application. He stated the guidelines are very specific for doors and windows and there is no flexibility. Mr. Henke referred to John Walton's letter that states the style of the new windows and door are appropriate for the interior and exterior architectural style of the structure. He also stated the muntin pattern of the new windows is appropriate for this style house. Mr. Turner responded that when such cases where people do the work before they come to the commission they try to be very lenient and find a way to approve it so they do not have to undo the work. Mr. Stephens asked if he would agree that the sash design, appearance, the original size and shape and the placement locations are the same. Mr. Turner replied the locations are the same, but it is difficult to say if they are the same size.

**Applicant's Rebuttal:**

Mr. Reynolds noted the guidelines say similar and he stated the replacement windows are similar. He pointed out some of the pictures of neighboring homes with similar windows and some that did not look as nice as the Lambert's.

**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 **UPHOLD** the Appeal of the determination of the Tulsa Preservation Commission to deny a Certificate of Appropriateness application, finding that to do otherwise would be excessively punitive, on the following described property:

LTS 80 81 & W15 LT 82 & N10 VAC ALLEY ADJ ON S LESS S6 LT 82 & LESS  
BEG SECR LT 81 TH N6 W2 CRV LF TO PT SL LT 81 E8 POB BLK 9, SOUTH  
SIDE ADDN, City of Tulsa, Tulsa County, State of Oklahoma

And,

On **MOTION** of **Stead**, the Board voted 5-0-0 (White, Henke, Stead, Tidwell, Stephens "aye"; no "nays"; no "abstentions"; no "absences") in **Case No. 20437** to **UPHOLD** the Appeal of the denial of a Certificate of Appropriateness by the Tulsa Preservation Commission on January 11, 2007, finding that to do otherwise would be excessively punitive, on the following described property:

LTS 80 81 & W15 LT 82 & N10 VAC ALLEY ADJ ON S LESS S6 LT 82 & LESS  
BEG SECR LT 81 TH N6 W2 CRV LF TO PT SL LT 81 E8 POB BLK 9, SOUTH  
SIDE ADDN, City of Tulsa, Tulsa County, State of Oklahoma

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**Case No. 20424****Action Requested:**

Special Exception to permit office use as a home occupation in an RM district (Section 401), located: 1540 East 1<sup>st</sup> Street.

**Presentation:**

**Ben Calicoat**, 401 South Boston, Suite 1810, represented the applicant, Anoop Khanna. This is a continued case for response to questions by the Board. The applicant has moved back into the duplex. He has a contract to purchase the property. This is now his primary residence with a full bath and kitchen. The applicant removed the signage. They have paved the sidewalk in front of the house. He informed the Board there is a very rough type of paved parking area in the rear. The vending machines in the office work by selection without payment. Mr. Calicoat noted some beer that was left over from a previous business and he instructed Mr. Khanna not to sell it or any other items at this location. Mr. Khanna assured him that all he wants to do is cash checks.

**Comments and Questions:**

Mr. Calicoat responded to Mr. White that Mr. Khanna lives in one side of the duplex. Mr. Khanna is purchasing the entire property but he has not made his plans known for the other side of the duplex.

**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 Special Exception to permit office use as a home occupation in an RM district (Section 401), with the following conditions: the conditions cited in the agenda packet starting on page 3.2: In order to be considered for home occupation by special exception the applicant must comply with the following conditions: The home occupation must be accessory to the use of the dwelling unit as a residence; Only members of the family residing in the dwelling shall participate in the home occupation; Signs or displays, including signs exceeding two square feet on a vehicle, advertising the home occupation on the premises, which are visible from outside the lot are prohibited; The home occupation shall be conducted entirely within an enclosed principal residential structure or customary accessory building; Mechanical equipment which creates noise, dust, odor or electrical disturbance is prohibited; Exterior alterations of the structure which would detract from the residential character of the structure are prohibited; Outside storage or display of materials or items associated with the home occupation is prohibited; A maximum of 500 sq. ft. of floor area may be used in the home occupation; Vehicles used in conjunction with the home occupation shall be parked off the street, on the lot containing the home occupation, and shall be of a type customarily found in a residential area: in addition, no posting of sign or signs in surrounding property that

are in conflict with the above conditions; limited to check cashing; no alcoholic beverages or other drug sales; the sidewalk in front of the residence shall be maintained with concrete or asphalt; parking on property be on hard surfaces; finding it will be in harmony with the spirit and intent of the code and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare, on the following described property:

W 10 LT 2 E 30 LT 3 BLK 1, MIDWAY ADDN, City of Tulsa, Tulsa County, State of Oklahoma

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### **NEW APPLICATIONS**

#### **Case No. 20436**

##### **Action Requested:**

Variance to increase the allowable coverage of the required rear yard from 30 to 35 percent in the RS-3 district (Section 210.B.5.a); Variance of the maximum height of an accessory building in the required rear yard from 18 feet to 20 feet (Section 210.B.5.b); and a Variance to reduce the setback of an accessory building from 3 feet to 1 foot (Section 210.B.5.b), located: 2716 East 13<sup>th</sup> Street South.

##### **Presentation:**

**Eric Gomez**, 2716 East 13<sup>th</sup> Street, stated the existing garage is 18' x 18' and is not large enough to park two vehicles. The house is larger than most in the neighborhood. They proposed to move the location of the garage for easier access. They share a driveway to the east and they have paved a portion of it. A site plan and photographs were submitted (Exhibits B-1 and B-2). He pointed out this is not new to the character of the neighborhood.

##### **Comments and Questions:**

He responded to questions from the Board. The existing structure is 17 ft. in height. He wanted to use a 12' x 12' roof pitch to stay in character with the house and neighborhood. It will be a garage only and will not have living quarters. He proposed to construct dormers just for additional light. The plans were drawn with consideration for the situation of the house and patio. They needed a wider garage. Mr. White encourage him to obtain a mutual access service easement for the maintenance of the east exterior wall of the proposed structure.

##### **Interested Parties:**

There were no interested parties who wished to speak.

##### **Board Action:**

On **Motion of Stead**, to **APPROVE** a Variance to increase the allowable coverage of the required rear yard from 30 to 35 percent in the RS-3 district (Section 210.B.5.a); Variance of the maximum height of an accessory building in the

required rear yard from 18 feet to 20 feet (Section 210.B.5.b); and a Variance to reduce the setback of an accessory building from 3 feet to 1 foot (Section 210.B.5.b), with a condition no living quarters in the upper floor of the garage; for applicant to furnish staff with a mutual access service agreement, per plan, finding the literal enforcement of the terms of the code would result in an unnecessary hardship, and that such extraordinary exceptional conditions or circumstances do not apply generally to other properties in the same use district, finding the variances will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan,

Mr. White questioned condition regarding living quarters.

On **Amended Motion of Stead**, the Board voted 5-0-0 (White, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a Variance to increase the allowable coverage of the required rear yard from 30 to 35 percent in the RS-3 district (Section 210.B.5.a); Variance of the maximum height of an accessory building in the required rear yard from 18 feet to 20 feet (Section 210.B.5.b); and a Variance to reduce the setback of an accessory building from 3 feet to 1 foot (Section 210.B.5.b), with a condition no living quarters in any portion of the garage; for applicant to furnish staff with a mutual access service easement, per plan, finding the literal enforcement of the terms of the code would result in an unnecessary hardship, and that such extraordinary exceptional conditions or circumstances do not apply generally to other properties in the same use district, finding the variances will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan, on the following described property:

LT 9 BLK 1, LONGVIEW SUB B6 FAIR ACRES, City of Tulsa, Tulsa County,  
State of Oklahoma

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**Case No. 20438**

**Action Requested:**

Appeal the determination of an administration official (Sect. 1605.A) or in the alternative; a Variance to permit a detached accessory building in the front yard. (Sect. 402.B.1.b), located: 5311 South Sandusky Avenue East.

**Presentation:**

**Nicole Moore**, 5311 South Sandusky Avenue East, stated the accessory building is existing. She added that she built it according to her interpretation of the zoning code. She did not realize she needed a permit to build it. She considered the building to be bounded on the north by her lot line and on the south by the house. She determined there was not a continuous line along her front lot line and thus the building was not in the front yard. She stated it was not on the front but on the side of her principal dwelling.

**Comments and Questions:**

Ms. Stead noted the potting shed was setting on lumber but they were not nailed in or concreted. She noted it would be a simple matter to move it. Ms. Moore replied that by her interpretation of the code, if she unbolts the structure from the foundation it is no longer attached to the ground and is no longer a structure. She did not think the Board would have any jurisdiction, by her own interpretation of the code. She described the foundation as a brick floor and the tie-rods are re-barbed into the dirt. She pointed out the neighborhood has a lot of large trees. She stated her hardship is: the potting shed needs southern light and it would be more visible to the street and make more impact on the neighbors to place it on the south side.

**Interested Parties:**

**John Houchen**, 5324 South Toledo Avenue, stated he opposed a shed in the front yard.

**Applicant's Rebuttal:**

Ms. Moore submitted photographs to exhibit her points (Exhibit C-1). She stated there is a low traffic volume. They built a wood privacy fence to screen a trailer, trashcans and other things.

**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 **DENY** the Appeal and **UPHOLD** the determination of an administration official (Sect. 1605.A) or in the alternative; and to **DENY** a Variance to permit a detached accessory building in the front yard. (Sect. 402.B.1.b), for lack of hardship, on the following described property:

LT 11 BLK 3, TANGLEWOOD ADDN, City of Tulsa, Tulsa County, State of Oklahoma

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**Case No. 20439**

**Action Requested:**

Special Exception to permit automotive repair (Use Unit 17) in a CS district (Section 701), located: 1428 North Lewis Avenue.

**Presentation:**

**Ritchie Cox**, 8180 Overlook Trail, Claremore, Oklahoma, stated the neighbor next door did not have any objections (Exhibit D-2).

**Mr. Henke out at 2:41 p.m. and returned at 2:43 p.m.**



He added this same type of business is operated across the street. He owns the lot to the south, it is not related to this case and has a separate address. He submitted photographs (Exhibit D-1) to show he has improved the neighborhood.

**Comments and Questions:**

He was questioned about the property behind the sheet metal fence. He thought there was a trailer and a couple of cars. He informed the Board that area is graveled. Ms. Stead informed the applicant that the Board would have to require paving of the south lot and no storage of cars along Oklahoma Place. Mr. Cuthbertson stated that any vehicle parked in front of the building on Oklahoma Place would be in the right-of-way. Mr. White pointed out that the width of Oklahoma Place is only about 22 ft. wide, less than the standard 26 ft.

**Interested Parties:**

**Homer Jones**, 2148 East Oklahoma Place, provided photographs and a petition (Exhibit D-1 and D-2). He complained that cars park on the sidewalk area. The parked vehicles block the drivers' line of vision at the corner. He mentioned multiple accidents at this corner.

**April Boerstler**, 1531 North Wheeling Avenue, agreed with the complaints mentioned by Mr. Jones. She stated the complaints the neighborhood has made.

**Patti McGill**, 1517 North Wheeling Avenue, stated she is part of the homeowners' association. She stated the numerous complaints they have made regarding other property owned by the applicant.

Mr. Tidwell out at 2:58 p.m.

Mr. Henke mentioned the Board received a letter from Roscoe Turner, as the President of the Sequoia Neighborhood Association, in objection to the application.

A map was also provided (Exhibit D-3).

**Applicant's Rebuttal:**

Mr. Tidwell returned at 3:01 p.m.

Mr. Cox stated the traffic problem is the fault of the City of Tulsa, because they are detouring traffic onto such a narrow street. He stated he keeps his properties nice and only sees the business owners about once per month. He told the owner to remove the cars from the front of the building.

**Board Action:**

On **Motion** of **White**, the Board voted 4-1-0 (White, Henke, Stead, Tidwell "aye"; Stephens "nay"; no "abstentions"; no "absences") to **DENY** a Special Exception to permit automotive repair (Use Unit 17) in a CS district (Section 701), finding the special exception would not be in harmony with the spirit and intent of the code

and would be injurious to the neighborhood, or otherwise detrimental to the public welfare, on the following described property:

LT 1 LESS BEG. NE COR. S. 22' NLY ON CURVE TO N. LINE E. 13.13' TO  
BEG. FOR ST BLK 2, LT 2 BLK 2, B F JACOBS' SUB L1-2 & 25-27  
SPRINGDALE ACRE LOTS, City of Tulsa, Tulsa County, State of Oklahoma

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**Case No. 20440**

**Action Requested:**

Variance of the 5 ft. side yard requirement in an RS-3 district to permit an existing encroachment (Section 603), 1352 East 20<sup>th</sup> Street South.

### Presentation:

**Chris Heroux**, 502 West 6<sup>th</sup> Street, represented the owners of the subject property, Philip and Nancy Wiles. They purchased the home with an existing addition. There was no indication or disclosure of a zoning issue at the time of the sale. The home is aesthetically pleasing and consistent with construction in the area. The previous owners did not build the addition and they owned the home since 2003. The hardship is the pre-existing condition of the addition to the home would be difficult to remove. A site plan was provided (Exhibit E-1).

**Interested Parties:**

There were no interested parties who wished to speak.

**Board Action:**

On **Motion of Stead**, the Board voted 4-1-0 (White, Stephens, Stead, Tidwell "aye"; Henke "nay"; no "abstentions"; no "absences") to **APPROVE** a Variance of the 5 ft. side yard requirement in an RS-3 district to permit an existing encroachment (Section 603), per plan, finding the owners did not have knowledge of the encroachment prior to purchase, it places the owners in a peculiar position of unnecessary hardship; finding the conditions existing do not apply generally to other property in the same use district, and 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, on the following described property:

W50 LT 3 , ASA ROSE SUB L8-9 B28 PARK PLACE, City of Tulsa, Tulsa  
County, State of Oklahoma

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**Case No. 20441**

**Action Requested:**

Variance of the frontage requirement in the CS district from 150 ft. to 72 ft. (Section 703), located: 10338 East 11<sup>th</sup> Avenue South.

**Presentation:**

**Steve Schuller**, 1100 ONEOK Plaza, 100 West 5<sup>th</sup> Street, represented the QuikTrip Corporation. He described his clients' proposal to obtain a lot-split for needed expansion of the business. He pointed out the unusual shape of the property due to the highway right-of-way. This exceptional condition is not typically found on other similar properties in this use district. The literal enforcement of the minimum street frontage requirement would present an unnecessary hardship for the property. The street frontage and access to the larger parcel is still sufficient. The seventy-two foot street frontage is adequate for CS use given the size of the parcel. There would be no increase in the number of commercial properties having access to 11<sup>th</sup> Street. The adjoining 117 ft. wide parcel would be tied by covenant to the QuikTrip Store parcel. He noted several cases the Board has granted a variance for lot-splits in similar situations, but did not list case numbers. A site plan was provided (Exhibit F-1).

**Comments and Questions:**

The Board members briefly discussed the access and the hardship.

**Board Action:**

On **Motion** of **White**, the Board voted 5-0-0 (White, Stephens, Stead, Henke, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a Variance of the frontage requirement in the CS district from 150 ft. to 72 ft. (Section 703), per plan, based on the odd-sized shape of the remaining property after the highway right-of-way was taken, with condition for a 117.75 ft. tract lot tie by covenant to the QuikTrip property to the west, 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, on the following described property:

COMM 50E & 265S NWC NE NW TH S185 E599.06 TO POB TH E392.98 TO  
WLY R/W HWY 169 TH NW ALG R/W 325.70N70.09 W189.75 S170 W116.81  
S214.99 POB SEC 7 19 1 4 2.577ACS, City of Tulsa, Tulsa County, State of  
Oklahoma

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**Case No. 20442**

**Action Requested:**

Variance of the front yard requirement in an RS-3 district (Section 403); and a Variance of the setback requirement for a detached accessory building in the required rear yard from 3 ft. to 0 ft. (Section 210.B.5.b), located: 1115 East 20<sup>th</sup> Street South.

**Presentation:**

**Gentra Sorem**, 6143 South New Haven, represented Toby Ballinger and Jeff Alderman, the owners of the subject property. There are two structures on the subject property that were built in the early twenty's. The front porch is large with eight-foot tall pillars and exists into the setback about ten feet. The garage in the back is either the original or on the same footprint of the original. They asked for a variance to recognize the structures and make sure they are not in violation of the current setbacks. The hardship is that they have been there for over 80 years and to require them to remove them would be detrimental to the house and loss of the garage. A site plan and photographs were provided (Exhibits G-1 and G-2).

**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 Variance of the front yard requirement in an RS-3 district (Section 403); and a Variance of the setback requirement for a detached accessory building in the required rear yard from 3 ft. to 0 ft. (Section 210.B.5.b), per plan on existing structure, finding the residential structure and garage were built in the early 1920's and do not conform to the current zoning code, which presents an excessive hardship, 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, on the following described property:

LTS 11 & 12 & S10 VAC ALLEY ADJ ON N BLK 5, MAPLE RIDGE ADDN, City of Tulsa, Tulsa County, State of Oklahoma

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**Case No. 20443**

**Action Requested:**

Variance of the required parking spaces from 30 to 11 spaces to permit a restaurant. (Sect. 1212.D), located: 1813 South Boston Avenue East.

**Presentation:**

**Tom Dittus**, 2032 East 14<sup>th</sup> Place, identified the property, parking spaces, and the different businesses. They proposed to do a lunch business, seven days per week, and late into the evening. They would add about 2,000 more feet for kitchen, patio and restrooms.

**Comments and Questions:**

Staff comments suggest re-stripping the parking spaces on the area on the east, which Mr. Dittus responded they would do. Mr. Cuthbertson pointed out that the way the parking lot and adjoining lots to the north and south are configured now, they flow between each other. He questioned if it would benefit the area to cut this lot off from the north and south.

**Interested Parties:**

There were no interested parties who wished to speak.

**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 **APPROVE** a Variance of the required parking spaces from 30 to 11 spaces to permit a restaurant. (Sect. 1212.D), finding the configuration and access to the lot this will not be per plan, the applicant will have the option to position the spaces to obtain the maximum flow of traffic into and through the lot, 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 on the following described property:

LT 5 BLK 3, SIEG ADDN, City of Tulsa, Tulsa County, State of Oklahoma

\* \* \* \* \*

**Case No. 20445**

**Action Requested:**

Interpretation of the Zoning Code to determine if digital display billboards are compliant with Sec 1221.F.8 & 14; or in the alternative a Variance of the requirement that no billboard contain flashing or blinking lights (Section 1221.F.8) and a Variance of the requirement that illumination of an outdoor advertising sign be illuminated by constant light (Section 1221.F.14), located: 402 South Heavy Traffic Way.

Ms. Stead asked why the Lamar Outdoor Advertising cases were going before the Board as an interpretation instead of a variance. Mr. Alberty responded that the applicant asked for an interpretation, hoping the Board would consider the new technology to be constant lighted

Mr. Henke stated the Board would hear the Lamar cases, 20445, 20446, 20447 and 20448 concurrently.

Mr. Ackermann informed the Board that these sign cases came from plan review at the Permit Center rather than Neighborhood Inspections.

**Presentation:**

**Bill Hickman**, 777 East 38<sup>th</sup> Street, stated that Lamar Outdoor Advertising submitted five applications to install digital display devices at five locations in Tulsa. The advertising face would remain the same as the existing billboards.

**Mr. Henke out at 3:47 p.m.**

Mr. Hickman stated that in December 2006, the Building Plans Examiner advised the applicant to go before the Board of Adjustment to interpret the Zoning Code, Sections 1221.F.8 and 1221.F.14. as it applies to this technology and implementation of this technology by Lamar. In particular, the deficiency letter pointed out from paragraph eight, that no outdoor advertising sign shall contain flashing lights, and paragraph fourteen specifies illumination by constant light.

Mr. Hickman referred to minutes of March 8, 2007 from the Sign Advisory Board that met with the applicant and staff to discuss the technology. He indicated they voted unanimously that this digital technology, per the mutual agreement of the Sign Advisory Board, and the research they conducted in conjunction with Lamar as to the operations of this technology complied with the ordinance.

**Mr. Stephens out at 3:58 p.m.**

He stated his purpose was to interpret these two sections of the zoning code as applied to this new technology. He reviewed the applicant's plan, stating the displays would not contain copy that blinks, flashes, or travels; and no full motion video or animation. It also refers to the transformation and brightness of ad copy.

Mr. Hickman reviewed the different styles used to change ads on billboards. He followed by describing what a digital display is and that it is not an LED on-premise sign.

**Mr. Stephens returned at 4:02 p.m.**

He reminded the Board that Oklahoma law allows billboard ad changes every eight seconds. He emphasized that a Daktronics display provides constant illumination at all times of day and night, with controlled brightness to eliminate flashing, blinking or traveling lights. He stated they calibrate the displays by the type of software, so that it cannot cause the distraction of such changes in the light. He noted that the Federal Highway Administration issued a policy in 1996 providing for changeable message signs for off-premise signs, regardless of the technology used, but these signs may still not contain flashing, intermittent or moving lights. He listed a number of cities that currently allow these types of signs.

**Interested Parties:**

**Michael Joyce**, 1717 South Boulder, attorney, represented the landowner, Michael Samarra, in Case No. 20445. He added that he also represents many other business owners that have billboard signs. He was impressed with the technology and was in support of it. He found them far superior to many of the existing billboards in Tulsa. He expected it would begin a clean up of the old existing signs. He encouraged an interpretation of the code to provide that it would allow these signs in Tulsa. Mr. Joyce thought that without an interpretation the granting of the variances could give Lamar an unfair advantage over their competitors in the billboard industry. He added there are numerous reputable sign company's with billboards in Tulsa. He pointed out they do not have a hardship for the variances and there are thousands of boards that are similarly situated.

Mr. White asked if the term digital display billboard would be sufficient to cover his concerns for other manufacturers. Mr. Joyce replied it would be sufficient, as long as they did not specify Daktronics. He stated that Mr. Samarra owns 402 South Heavy Trafficway, and that is the sight where they have a dispute with Lamar as to the validity and existence of that lease.

**Bill Stokely**, with Stokely Outdoor Advertising, complimented the applicant's presentation. He spoke of the history of improvements in billboard advertising. He stated this is another step of moving forward in quality in the industry. He supports the applicant in what they are trying to do.

**Greg Jennings**, 2260 South Troost, questioned the applicant's assumption that all the billboards in Tulsa are legal. He pointed out that many of the signs the applicant displayed are probably illegal. There has not been a sign inspector for the city for three years. He stated there is only about 30% of the permits requested per year, of those requested a few years ago. Mr. Jennings reviewed several definitions (Exhibit H-1) for clarity of the issues. He noted the terminology, changing static message, are contradictory words. He provided photographs of existing tri-vision signs (Exhibit H-2). He described the technology for LED signs, tri-visions signs. He pointed out numerous three-sided signs and changeable message signs that change messages between 3.5 – 4.0 seconds, much less than the stated Oklahoma statute allows. Some of the signs use fading messages and scrolling messages.

**Ms. Stead out at 4:32 p.m.**

The Sign Advisory Board has at least two members in the sign industry. Mr. Jennings encouraged the Board to discount their approval somewhat. He considers this good technology but he indicated it leads to abuses. He stated the applicant is trying to re-write the sign ordinance.

**Ms. Stead returned at 4:34 p.m.**

### **Applicant's Rebuttal:**

Mr. Hickman responded that the Daktronics engineers are experts in this industry. He indicated the technology Mr. Jennings presented did not apply to the Daktronics technology. They are a different form of LED technology. He upheld the terminology used by the experts to mean what they say, stating they would not jeopardize their reputation for signs in Tulsa and a few hundred thousand dollars to Lamar. He stated the Oklahoma statutes (Exhibit H-3) specifically address this issue. He added the City of Tulsa ordinance does not specifically address this issue. Mr. Hickman stated the applicant is saying the current ordinance in the City of Tulsa would allow and does allow this technology and does so per Lamar's Plan. The state of Oklahoma has looked at this technology and the law specifically says no flashing lights, steadily burning lights are required. He referred to a letter from the Oklahoma Department of Transportation (ODOT), stating they approved this type of signs, at the risk of losing millions of dollars of federal funding. The conditions the Sign Advisory Board provided as part of their recommendations, protect Lamar and the city.

### **Comments and Questions:**

Ms. Stead noted that the applicant stressed that ODOT approved these signs. She pointed out that at the bottom of a letter from ODOT stated, "The issuance of this permit shall not be construed to supersede or override any ordinance, act or rule of any city, town or county zoning authority or other duly constituted regulatory body." She added that the Board faces a zoning code, as is, and must determine under that zoning code whether these signs comply.

**John Moody**, interjected as co-counsel with Lamar, indicated the intent of the code was to control the intensity of light or brightness. He stated this technology provides for constant intensity, which is what the code addresses.

Board discussion ensued.

### **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 **INTERPRETED** the Zoning Code and determined this digital display billboard **does not comply** with the City of Tulsa Zoning Code, on the following described property:

PRT LTS 1 THRU 5 & 8 BLK 42 & VAC ALY & VAC 4TH ST & PRT LTS 12 13 & 14 BLK 45 & VAC MAYBELLE AVE BEG 18.1E NEC LT 1 BLK 42 TH SW ALONG HTW 597.7 NW33 N40.23 SE R/W RR NE TO SL 3RD ST E POB LESS N15 FOR ST, OWEN ADDN AMD, City of Tulsa, Tulsa County, State of Oklahoma

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**Case No. 20446**

**Action Requested:**

Interpretation of the Zoning Code to determine if digital display billboards are compliant with Sec 1221.F.8 & 14; or in the alternative a Variance of the requirement that no billboard contain flashing or blinking lights (Section 1221.F.8) and a Variance of the requirement that illumination of an outdoor advertising sign be illuminated by constant light (Section 1221.F.14), located: 6400 South Highway 169.

**Board Action:**

On **Motion** of **Stead**, the Board voted 5-0-0 (White, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") **INTERPRETED** in BOA Case No. 20446, Interpretation of the Zoning Code to determine if digital display billboards are compliant with Sec 1221.F.8 & 14, and find that it is **not compliant** with the current City of Tulsa Zoning Code, on the following described property:

LT-8-BLK-6, UNION GARDENS, City of Tulsa, Tulsa County, State of Oklahoma

\* \* \* \* \*

**Case No. 20447**

**Action Requested:**

Interpretation of the Zoning Code to determine if digital display billboards are compliant with Sec 1221.F.8 & 14; or in the alternative a Variance of the requirement that no billboard contain flashing or blinking lights (Section 1221.F.8) and a Variance of the requirement that illumination of an outdoor advertising sign be illuminated by constant light (Section 1221.F.14), located: Southwest corner of 129<sup>th</sup> East Avenue and East 51<sup>st</sup> Street.

**Board Action:**

On **Motion** of **Stead**, the Board voted 5-0-0 (White, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") **INTERPRETED** in BOA Case No. 20447, Interpretation of the Zoning Code to determine if digital display billboards are compliant with Sec 1221.F.8 & 14, and find the application is **not in compliance** with the current City of Tulsa Zoning Code, on the following described property:

BEG 65S & 50W NEC NE TH S361.34 NW732.87 TO PT 50S NL SEC E611.48 TO PT 65W EL SEC SE21.25 POB LESSBEG 65S & 50W NEC TH S14.16 NW29.98 W328.84 N8 E33 5 SE21.25 POB SEC 32 19 14 2.635ACS, City of Tulsa, Tulsa County, State of Oklahoma

\* \* \* \* \*

**Case No. 20448**

**Action Requested:**

Interpretation of the Zoning Code to determine if digital display billboards are compliant with Sec 1221.F.8 & 14; or in the alternative a Variance of the requirement that no billboard contain flashing or blinking lights (Section 1221.F.8) and a Variance of the requirement that illumination of an outdoor advertising sign be illuminated by constant light (Section 1221.F.14), located: 4633 East 31<sup>st</sup> Street South.

**Board Action:**

On **Motion** of **Stead**, the Board voted 5-0-0 (White, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") **INTERPRETED** in BOA Case No. 20448, Interpretation of the Zoning Code to determine if digital display billboards are compliant with Sec 1221.F.8 & 14, and find the application is **not in compliance** with the current City of Tulsa Zoning Code, on the following described property:

PRT SE SE BEG 354.62W SECR SE SE TH W100 N303.45 SE110.47 S256.78  
POB LESS S35 & N16.5 FOR RDS SEC 16 19 13 .52AC, City of Tulsa, Tulsa  
County, State of Oklahoma

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**Case No. 20445**

**Action Requested:**

Variance of the requirement that no billboard contain flashing or blinking lights (Section 1221.F.8) and a Variance of the requirement that illumination of an outdoor advertising sign be illuminated by constant light (Section 1221.F.14), located: 402 South Heavy Traffic Way.

**Presentation:**

Mr. Hickman spoke to the hardship, stating this technology supersedes the language in the ordinance. They did not contemplate when they drafted the zoning code, this type of technology or the descriptive language. He indicated the intention was to prevent a strobe-like effect on the face itself or any light shining onto the sign that would be flashing or blinking that would be distracting. This technology does not violate the spirit and intent of the code as it was written. He added that the Board of Adjustment approved school and church LED signs are much more intrusive to the neighborhoods and traffic than this type of sign.

**Comments and Questions:**

Ms. Stead commented that many of the fast-food signs on commercial property do not have to come before the Board. The Board only rules on the signs that are requested in residential areas. The Board members discussed the issues of how to consider the billboards as it relates to the land and how to determine the literal interpretation of the code regarding them.

**Interested Parties:**

**Michael Joyce**, 1717 South Boulder, attorney, stated the Board is not hearing cases to legislate through variances. There is no hardship for these billboards. He indicated approval of these variances would set a bad precedent for all the billboards in Tulsa. He was in support of amendments to the zoning code.

Greg Jennings agreed that the zoning code does not permit these signs and there is not a hardship.

**Applicant's Rebuttal:**

Mr. Hickman commented that he has researched minutes of this Board. He stated that in light of comments of the Board it would be inconsistent to now say they need legislative action. He compared the cases for churches and schools LED message signs. Mr. Henke reminded him that he told the Board these signs are different than LED signs. Mr. Hickman responded that the applicant's signs are much less invasive. He stated their request is directly in line with prior precedent in similar technology in cases approved by the Board.

Mr. White pointed out that the churches and schools are on real property and they are seeking a sign that promotes their real property. Mr. Henke pointed out they are not billboards.

Board discussion ensued.

**Board Action:**

On **Motion of Stead**, the Board voted 3-2-0 (White, Henke, Stead "aye"; Stephens, Tidwell "nay"; no "abstentions"; no "absences") to **DENY** a Variance of the requirement that no billboard contain flashing or blinking lights (Section 1221.F.8) and a Variance of the requirement that illumination of an outdoor advertising sign be illuminated by constant light (Section 1221.F.14), for lack of a hardship, on the following described property:

PRT LTS 1 THRU 5 & 8 BLK 42 & VAC ALY & VAC 4TH ST & PRT LTS 12 13 & 14 BLK 45 & VAC MAYBELLE AVE BEG 18.1E NEC LT 1 BLK 42 TH SW ALONG HTW 597.7 NW33 N40.23 SE R/W RR NE TO SL 3RD ST E POB LESS N15 FOR ST, OWEN ADDN AMD, City of Tulsa, Tulsa County, State of Oklahoma

\*\*\*\*\*.

**Case No. 20446**

**Action Requested:**

Variance of the requirement that no billboard contain flashing or blinking lights (Section 1221.F.8) and a Variance of the requirement that illumination of an

outdoor advertising sign be illuminated by constant light (Section 1221.F.14), located: 6400 South Highway 169.

**Board Action:**

On **Motion of Stead**, the Board voted 3-2-0 (White, Henke, Stead "aye"; Stephens, Tidwell "nay"; no "abstentions"; no "absences") to **DENY** a Variance of the requirement that no billboard contain flashing or blinking lights (Section 1221.F.8) and a Variance of the requirement that illumination of an outdoor advertising sign be illuminated by constant light (Section 1221.F.14), for lack of a hardship, on the following described property:

LT-8-BLK-6, UNION GARDENS, City of Tulsa, Tulsa County, State of Oklahoma

\* \* \* \* \*

**Case No. 20447**

**Action Requested:**

Variance of the requirement that no billboard contain flashing or blinking lights (Section 1221.F.8) and a Variance of the requirement that illumination of an outdoor advertising sign be illuminated by constant light (Section 1221.F.14), located: Southwest corner of 129<sup>th</sup> East Avenue and East 51<sup>st</sup> Street.

**Board Action:**

On **Motion of Stead**, the Board voted 3-2-0 (White, Henke, Stead "aye"; Stephens, Tidwell "nay"; no "abstentions"; no "absences") to **DENY** a Variance of the requirement that no billboard contain flashing or blinking lights (Section 1221.F.8) and a Variance of the requirement that illumination of an outdoor advertising sign be illuminated by constant light (Section 1221.F.14), for lack of a hardship, on the following described property:

BEG 65S & 50W NEC NE TH S361.34 NW732.87 TO PT 50S NL SEC E611.48 TO PT 65W EL SEC SE21.25 POB LESSBEG 65S & 50W NEC TH S14.16 NW29.98 W328.84 N8 E33 5 SE21.25 POB SEC 32 19 14 2.635ACS, City of Tulsa, Tulsa County, State of Oklahoma

\* \* \* \* \*

**Case No. 20448**

**Action Requested:**

Variance of the requirement that no billboard contain flashing or blinking lights (Section 1221.F.8) and a Variance of the requirement that illumination of an outdoor advertising sign be illuminated by constant light (Section 1221.F.14), located: 4633 East 31<sup>st</sup> Street South.

**Board Action:**

On **Motion** of **Stead**, the Board voted 3-2-0 (White, Henke, Stead "aye"; Stephens, Tidwell "nay"; no "abstentions"; no "absences") to **DENY** a Variance of the requirement that no billboard contain flashing or blinking lights (Section 1221.F.8) and a Variance of the requirement that illumination of an outdoor advertising sign be illuminated by constant light (Section 1221.F.14), for lack of a hardship, on the following described property:

PRT SE SE BEG 354.62W SECR SE SE TH W100 N303.45 SE110.47 S256.78  
POB LESS S35 & N16.5 FOR RDS SEC 16 19 13 .52AC, City of Tulsa, Tulsa  
County, State of Oklahoma

\* \* \* \* \*

**Case No. 20450**

**Action Requested:**

Variance of the minimum required lot area permitted in the AG district; Variance of the minimum land area per dwelling permitted in the AG district; Variance of the minimum lot width permitted in the AG district; and a Variance of the minimum permitted frontage on a public road in the AG district to permit a lot split (Section 303 and 206), located: 3220 East 101<sup>st</sup> Street South.

**Presentation:**

**Ted Sack**, 111 South Elgin, stated this is a non-conforming tract in AG zoning. They proposed a lot-split on the west side to add as a private street in the subdivision. This will be an improvement, adding access and more frontage. They will also add some utilities that they do not have now. He provided a site plan and exhibit B, as shown in the agenda packet on pages 17.6 and 17.7 (Exhibits I-1 and I-2).

**Comments and Questions:**

Ms. Stead asked Mr. Sack if he would have a problem in the Board making approval subject to the site plan and applicant's exhibit B.

**Interested Parties:**

**Kim Phelps**, 2940 East 102<sup>nd</sup> Street, thought Tract A was a dirt road that leads from 101<sup>st</sup> past existing houses to the subdivision. She stated it backs up to her home and others. She understood that Riverview Parks Estates was going to be from Delaware not from 101<sup>st</sup>. She asked if it would be improved and if it would have signage. She expressed concern that homes would be cut-off.

Ms. Stead responded there would be no access to Florence Avenue without the variances, whether it is paved or not. The traffic ingress from Delaware only would be exacerbated if there was not another point of ingress and egress.

Ms. Phelps was concerned because the area between the homes on the east and those on the west is narrow.

Mr. Alberty stated Florence from 101<sup>st</sup> Street South to this location is dedicated. The street is not currently improved to City standards. Mr. Sack has applied to make his development compliant with a PUD. He needs the lot-split from the AG tract to be in compliance. When the property on the east side of Florence is developed, it will probably improve it to current standards. It is actually a dedicated street.

**Applicant's Rebuttal:**

Mr. Sack stated the lot-split will help provide an additional point of access on 101<sup>st</sup> Street, which is a condition of the PUD and the plat.

**Mr. Tidwell out at 5:30 p.m.**

**Board Action:**

On **Motion of Stead**, the Board voted 4-0-1 (White, Stephens, Henke, Stead "aye"; no "nays"; Tidwell "abstained"; no "absences") to **APPROVE** a Variance of the minimum required lot area permitted in the AG district; Variance of the minimum land area per dwelling permitted in the AG district; Variance of the minimum lot width permitted in the AG district; and a Variance of the minimum permitted frontage on a public road in the AG district to permit a lot split (Section 303 and 206), in accordance with location site plan, page 17.6, and applicant's exhibit B, less the statement under Tract A.1, finding that without approval of the variances requested the traffic flow to, from and within the Riverwalk Estate Subdivision would be limited; and finding the literal enforcement of the terms of the code would result in an unnecessary hardship, and that such extraordinary exceptional conditions or circumstances do not apply generally to other properties in the same use district; finding it will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan, on the following described property:

PRT S/2 NE NE BEG 1992.33E & 661.41S NWC NE TH E189.9 S176.4 W189.9  
N176.4 POB SEC 29 18 13 0.769AC, City of Tulsa, Tulsa County, State of  
Oklahoma

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**Case No. 20451**

**Action Requested:**

Variance of the setback requirement from the centerline of an adjoining arterial street from 100 ft. to 58 ft. (Section 703); Variance of the setback from an abutting R district boundary line from 62 ft. (Section 703); a Variance of the required parking from 32 to 26 (Section 1211.D); and a Special Exception to modify the

screening requirement between the subject property and an adjoining R district (Section 212.C), located: 2425 East Pine Street North.

Mr. Cuthbertson stated the applicant has reconfigured the parking lot and the parking variance is no longer necessary.

**Presentation:**

**David Riggs**, 9908 East 21<sup>st</sup> Street, stated the intended use is a dental clinic. It will be bi-lingual and open nights.

**Mr. Tidwell returned at 5:34 p.m.**

**Mr. Henke out at 5:34 p.m.**

He submitted exhibits, including the site plan (Exhibit J-1, J-2, J-3). The clinic will accept Medicaid and a dental repayment program. Mr. Riggs stated he has met the parking requirements.

**Mr. Henke returned at 5:35 p.m.**

Mr. Riggs proposed to build a two-story building and 41 ft. in height. They do not plan for windows on the rear of the building, facing the residential property.

**Interested Parties:**

Mr. Henke commented that the Board received a letter from the Sequoyah Neighborhood Association signed by Roscoe Turner, President, in objection to this application.

**April Boerstler**, 1531 North Wheeling Avenue, expressed support for the business but the setbacks and screening need to remain the same. She did not want it to set a precedent. She was concerned for the children going through this area to and from the Springdale School.

**Patti McGill**, 1517 North Wheeling, was in support of the application. She wanted to know where the parking would be located. She stated that sometimes the traffic goes through very fast.

**Board Action:**

On **Motion** of **White**, the Board voted 5-0-0 (White, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a Variance of the setback requirement from the centerline of an adjoining arterial street from 100 ft. to 58 ft. (Section 703); Variance of the setback from an abutting R district boundary line from 62 ft. (Section 703); finding the hardship to be the unusual, shallow depth of the lot; and 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; and a Special Exception to modify the screening requirement between the subject property and an adjoining R district (Section 212.C), finding the rear of the building will meet the screening needs in it's location, and a six foot fence will extend along the south line of the alley from the east and west side of the building to the streets; 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; with conditions to maintain sidewalk on Pine and construct sidewalks on Lewis Place and Atlanta Place; per plan and elevation, with a maximum height of 41 ft., on the following described property:

PT LTS 668 & 669 LESS BEG SWC LT 668 TH E100 N 8.48 WLY 105 TH S 26.2 TO BEG BLK60, LT 670 LESS PRT BEG SWC LT 670 TH N8.48 SELY TO PT S5 W50 POB BLK 60, LT 671 LESS S5 BLK 60, TULSA HGTS, City of Tulsa, Tulsa County, State of Oklahoma

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#### **Case No. 20452**

##### **Action Requested:**

Variance of the parking requirement from 448 to 391 (Section 1211/12/13/14.D and 1219.D), located: 6612 South Memorial Drive East.

##### **Presentation:**

**Lou Reynolds**, 2727 East 21<sup>st</sup> Street, stated his client is purchasing the former Mervyn's building. It is part of a mixed-use center. They have 391 spaces on site. They proposed to develop it with mixed uses. He added 45,000 square feet will be a Gold's Gym-Health Club. The current parking requirements were not in effect in the early 1980's when this structure was built. They have more than one parking space per 200 square feet. They have a cross-parking agreement with the owner of the rest of the Village at Woodland Hills. The center is unique, in that it is cut-off from any residential area.

##### **Comments and Questions:**

Mr. Stephens asked for the remainder square footage, which Mr. Reynolds replied is about 35,000 square feet. Mr. White asked for the original requirement on the parking. Mr. Reynolds replied the original requirement if it were built out like they now propose would be about 448 spaces, which is less than a 15% variance. There was no variance originally.

##### **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 Variance of the parking requirement from 448 to 391 (Section 1211/12/13/14.D and 1219.D), finding the requirement of one parking space to 200 square feet is excessive in this case; and the applicant has cross-parking agreements with other areas in the center; and finding these exceptional conditions do not apply generally to other property in the same use district; and the variance will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan, on the following described property:

LT 2 BLK 1, VILLAGE AT WOODLAND HILLS, THE, City of Tulsa, Tulsa County, State of Oklahoma

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**Case No. 20453**

**Action Requested:**

Special Exception to permit Use Unit 28 (scrap metal processing and shipping) within an IM district (Section 901); a Special Exception to modify the screening requirement (Section 1228.C); and a Variance of the limitation on the height of materials placed in open air staging areas (Section 1228.C.3) to permit a maximum height of 25 ft., located: 2300 North Lewis Avenue East.

Mr. Cuthbertson commented that the notices were modified to specify what Use Unit 28 is, and this is for scrap metal processing and shipping.

**Presentation:**

**Roy Johnsen**, 201 West 5<sup>th</sup> Street, Suite 501, represented Mid-America Alloys, Inc. He informed the Board that he had the principals present of that organization. They are the contract purchaser of the 7.2 acres of subject property. He pointed out the IM zoning of the property and the expressway right-of-way. He showed that the west boundary is formed by Highway 75, at the narrowest part approximately 200 ft. He noted the elevated highway and the absence of residential homes.

**Mr. Stephens out at 6:03 p.m. and returned at 6:05 p.m.**

He submitted a site plan, applicant's offer of conditions to approval and photographs (Exhibits K-1, K-3 and K-4). The business involves the receipt and processing of scrap sheet metal. It is not an auto salvage. He stated that a substantial amount of the work will be conducted indoors in existing structures. He pointed out the area to be used for open-air storage of scrap metal. The stacks would be up to 25 ft. in height maximum, but they were willing to limit it to a 20 ft. height. There would be screening of the open storage area with eight-foot fences

and buildings except along the elevated highway. The stacks will only be there when new deliveries come in, but they diminish as the metal is processed. He stated the applicant is willing to do landscaping adjacent to the open-air storage. He described some of the landscaping, including 10-12 ft. pines. Mr. Johnsen pointed out the view of the property next to the subject property. There is no screening on that property. The applicant proposed to clean-up the property; remove some old structures; and construct a new metal fence.

**Comments and Questions:**

Mr. Stephens asked if the business would be open to the public. Mr. Johnsen replied that it will be open to the public.

**Interested Parties:**

**Patti McGill**, stated they already have Borg Steel and a smelter close by. She expressed concern for the dirt and dust that would affect the neighborhood. She objected to the view from in-coming flights also.

**Mr. Henke out at 6:00 p.m.**

**April Boerstler**, 1531 North Wheeling Avenue, objected to the application for the same concerns listed above. She pointed out the creek is contaminated.

Mr. Henke stated the Board received a letter from Roscoe Turner, President of the Sequoia Neighborhood Association in opposition of the application.

**Applicant's Rebuttal:**

Mr. Johnsen submitted the landscaping plan (Exhibit K-2). He reviewed it for the Board, stating the screening fence provides a uniform screening except along the railroad and along the north. He informed the Board there will be considerable hard surface that will eliminate much of the dirt and dust problems.

Mr. Tidwell was very impressed with the application. He considered it very advanced in the design and plan. He stated it would take care of the big problem of dust in this industry. He added they are doing a lot for the environment. Mr. Stephens asked if the railroad spur in the plan was important to the operation. Mr. Johnsen replied that it is and they do plan to use it. Mr. Ackermann suggested if the Board is inclined to approve and adopt the landscape plan, that it will be maintained in accordance with the plan.

**Board Action:**

On **Motion** of **Tidwell**, the Board voted 5-0-0 (White, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a Special Exception to permit Use Unit 28 (scrap metal processing and shipping) within an IM district (Section 901); a Special Exception to modify the screening requirement (Section 1228.C), finding the special exceptions 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; and a Variance of the limitation on the height of materials placed in open air staging areas (Section 1228.C.3) to permit a maximum height of 20 ft., per plan and per landscaping plan to be installed and maintained by the owner; planting of non-deciduous trees only along Hwy-75; the sidewalk on North Lewis to be installed and maintained; applicant's narrative and use conditions marked page 20.7 (Exhibit K-3), 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; on the following described property:

PRT SE NE BEG 1420.2S & 33W NEC NE TH W385.05 N100 W40.57 SW184.58 SW177.68 SW104.06 SW234.02 SW254.61 S80 NE836.19 N358.97 POB SEC 30 20 13 7.25AC , COOTS 2ND ADDN AMD, City of Tulsa, Tulsa County, State of Oklahoma

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#### **Case No. 20454**

##### **Action Requested:**

Special Exception for Use Unit 17 to permit automobile sales in a CS district (Sect. 710); Variance to allow open air storage and display of merchandise within 300' of an adjoining R district (Sect. 1217.3), located: 1606 North Sheridan Road East.

##### **Presentation:**

**Melvin McCurley**, 805 North Date, Broken Arrow, Oklahoma, stated the subject property has been used for auto sales and repair for years. When Mr. Sanders, purchased it he was unaware that it was not zoned for that use. He proposed sale of 15 – 20 late model used vehicles and indoor repair work only.

##### **Comments and Questions:**

Ms. Stead asked what they planned to put behind the screening fence. Mr. McCurley replied they might put a dead vehicle back there. She reminded him that it would need to be paved. Mr. White suggested a five-year limitation on the approval. Mr. McCurley stated they would be agreeable to that.

##### **Interested Parties:**

**Erick Jones**, 1540 North Sheridan, stated he came to find out if there would be storage of inoperable cars and if repair service would be kept inside. Mr. Stephens commented that he is not zoned for auto repair.

##### **Applicant's Rebuttal:**

He assured the Board they do not plan to do outside repair, just on the cars they have for sale.

**Board Action:**

On **Motion** of **Stephens**, the Board voted 5-0-0 (White, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a Special Exception for Use Unit 17 to permit automobile sales in a CS district (Sect. 710), finding it will be in harmony with the spirit and intent of the code and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare; Variance to allow open air storage and display of merchandise within 300' of an adjoining R district (Sect. 1217.3), with conditions: hours of operation 8:00 a.m. to 8:00 p.m.; prohibit and limit storage of vehicles or parts behind the structure; Kennebunkport formula for lighting; no storage of inoperable vehicles; any repair would be inside and for their use only, not for public use; dust free and hard parking surface; no storage behind screening fence above the height of the fence; limit approval to five years, per plan, 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, on the following described property:

LTS 7 & 8 BLK 4, SCAGGS ADDN, City of Tulsa, Tulsa County, State of Oklahoma

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**Case No. 20455**

**Action Requested:**

Special Exception to modify the fence height in the required front yard from 4 ft. to 8 ft. (Section 210.B.3), located: 1264 Est 27<sup>th</sup> Street South.

**Presentation:**

**Mark Nelson**, 1645 South Boston Avenue, stated he was working with the homeowner of the subject property on some aesthetic improvements. The primary elevation of the house faces Peoria and he has no privacy or sound protection. He proposed to build a privacy wall on Peoria. He noted several other walls on Peoria. A site plan was provided (Exhibit L-1).

**Interested Parties:**

**Greg Jennings**, objected to a solid wall on Peoria in the front yard. He reminded the Board that some of the walls on Peoria, namely the one across the street from the subject property are illegal. He noted they did not request a variance and they did not provide a license agreement. He pointed out numerous accidents at this corner.

**Applicant's Rebuttal:**

Mr. Nelson responded there is nothing to show what caused the accidents, not necessarily the wall. The wall on the neighboring property is much closer to the curb than the proposed wall, which will be a minimum of fifteen feet from the curb.

Board discussion ensued.

**Board Action:**

On **Motion** of **White**, the Board voted 5-0-0 (White, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a Special Exception to modify the fence height in the required front yard from 4 ft. to 8 ft. (Section 210.B.3), with the amended plan submitted today where the fence along Peoria will turn west at a point approximately four feet north of the front of the house, and terminate straight north of the northeast corner of the existing steps, finding it will be in harmony with the spirit and intent of the code and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare, on the following described property:

E 60 LT 1 BLK 19, SUNSET TERRACE, City of Tulsa, Tulsa County, State of Oklahoma

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**OTHER BUSINESS**

**Request for interpretation**

Request for interpretation to establish permitted accessory use related to Horticultural Nurseries in an AG district.

Mr. Cuthbertson suggested Chris Sansone, Neighborhood Inspections, initially address this to the Board, as it was his request. He added that the question is, what is accessory to a horticultural business.

**Chris Sansone**, 111 South Greenwood, City of Tulsa Zoning Official, stated they received an application in 2006 for a horticulture nursery, which was approved. The applicant was informed that this type of business was limited to no retail sales on site. Recently the applicant came back to permitting to add a warehouse and office and wholesale/retail sales. They informed the applicant that a warehouse and office were not permitted in an AG district. A map was provided (Exhibit M-1).

Ms. Stead asked if this was included in the proposed amendments to the zoning code. Mr. Alberty replied there was a proposed amendment to allow products that were grown on-site within an AG district to be sold. He stated it was not intended for a horticultural nursery, which has a specific designation in the code. He suggested that the magnitude of these accessory buildings appeared to the permit

service and staff, that it may be beyond what is anticipated in the code, as incidental and accessory to the primary use.

Mr. Sansone stated they considered if it was AG-zoned with a house with a proposal for home office use, they would be limited to 500 sq. ft. The footage was an issue. The office and warehouse bordered on principle use size. They did not have any guide to limit square footage for principle use.

Roy Johnsen, responded with the question, "What are the provisions?" He noted that horticulture use is permitted. He considered the office an accessory use to the horticultural nursery. He stated the business cannot be operated without sales. There is no condition requiring them to conduct the sales from a remote location. They need administrative staff, billing, bookkeeping, and contractor/customers. He mentioned that they would need to store equipment and things that need to be under a roof.

Mr. Ackermann stated that as long as the proposed use is accessory to the established, existing use on the property, it is not a principle use.

Mr. Sansone stated the whole issue was the size in reference to accessory use. They did not feel they had the discretionary authority for this proposal.

**Board Action:**

On **MOTION** of **White**, the Board voted 5-0-0 (White, Henke, Stead, Tidwell, Stephens "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** an Interpretation, that Use Unit 3, Horticulture Nurseries, include office and warehouse, based on the plan submitted today for the wholesale sales only for horticulture products for the Spring Creek Nursery at 11110 South Delaware Avenue would be incidental and accessory to the Horticulture Nursery.

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There being no further business, the meeting adjourned at 7:26 p.m.

Date approved: 4/10/07

Frank K. Henke, Jr.  
Chair