

**CITY BOARD OF ADJUSTMENT**  
MINUTES of Meeting No. 1043  
Tuesday, March 8, 2011, 1:00 p.m.  
Tulsa City Council Chambers  
One Technology Center  
175 East 2<sup>nd</sup> Street

<b>MEMBERS PRESENT</b>	<b>MEMBERS ABSENT</b>	<b>STAFF PRESENT</b>	<b>OTHERS PRESENT</b>
Henke, Chair Stead Tidwell, Secretary Van De Wiele White, Vice Chair		Alberty Cuthbertson Sparger	Boulden, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Wednesday, March 2, 2011, at 10:16 a.m., as well as at the Office of INCOG, 2 West Second Street, Suite 800.

After declaring a quorum present, Chair Henke called the meeting to order at 1:00 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 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the **Minutes** of February 22, 2011 (No. 1042).

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**UNFINISHED BUSINESS**

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## **Case No. 21222-Nancy Keithline**

### **Action Requested:**

Special Exception to permit a principal use off-street parking lot (Use Unit 10) in an RM-2 district (Section 401). **Location:** 1640 and 1644 East 7th Street

### **Presentation:**

**Nancy Keithline**, 1348 East 43<sup>rd</sup> Court, Tulsa, OK; she is requesting a Special Exception for a parking lot for her dental practice because the staff has increased from 13 to 47. Two vacant houses to the south of the dental practice were purchased and demolished to be able to have a parking lot. The two tracts of land are approximately 100' x 100' square. The parking lot would be for the office staff to use during business hours and would accommodate 16 cars. The parking would then become a community parking lot after hours during the evening and on weekends, as is the parking lot around the perimeter of the building. Ms. Keithline has been in several meetings with the Pearl District Association and they are cooperating with a number of agreements to make this, hopefully, a phase one of a larger lot yet to come if the City should decide to build a larger parking facility in this area. Ms. Keithline also stated that they are working closely with the Pearl District Association because no one concerned wants to have another open patch of asphalt for parking; therefore, the lot will be landscaped, lighted and properly surfaced. The parking lot has also been designed so that if the City of Tulsa should decide to make this into a larger parking facility, access can be obtained by the south end and still have access to the back of the properties that surround the current proposed parking lot.

### **Interested Parties:**

**Lorenda Stetler**, 2440 South St. Louis Avenue, Tulsa, OK; she stated she is an officer of the Pearl District Association and she is also on the Urban Design Committee in charge of this project within the Pearl District. The Keithlines are very willing to work within the District's guidelines and they have agreed on everything that has been asked of them. Ms. Stetler also stated the Pearl District Association does not have any objections to the proposed parking lot.

Ms. Stead asked if sidewalks had been provided for in the development of the project because they would be required, and Ms. Keithline stated they were in the proposed plans.

Mr. Henke asked Ms. Keithline to read statements that she had for the Board to hear. These statements were from an e-mail from Mr. Theron Warlick to Ms. Keithline and were presented to the Board, Exhibit 2-A, for Case #BOA-21222. Ms. Keithline read the following statements to the Board:

- "That the applicant will support moving the on-street parking zone located on the north side of 7<sup>th</sup> Street 40 feet to the east in order to facilitate truck movement into the off-street loading area directly to the south." Ms. Keithline stated this not part of this application but it is something that the traffic engineer allowed on

street parking on the north side of 7<sup>th</sup> Street, which restricts the loading access of the trucks for the furniture company in the area. Therefore, they have agreed to eliminate two parking spaces to accommodate the truck movement.

- “That the applicant will work with public and private partners to expand this community parking resource in the future.” Ms. Keithline stated this involves the development of the perimeter of this area and that the parking would be in the center and the access would be off 7<sup>th</sup> Street.
- “That, upon request, the applicant will agree to cross access easement agreements in order to facilitate parking within the public resource and provide access to abutting development.” Ms. Keithline stated this is something that will happen in the future.
- “That the applicant make the facility available to the public after business hours.” Ms. Keithline this would be after 5:00 p.m. and weekends.
- “That the applicant makes design changes, including the setback as shown on the attached site plan, with modifications as agreed to in previous meetings. That fencing should enclose the parking area, and not extend into the front yard as depicted.” Ms. Keithline stated they have turned the fences inward so when someone is exiting the parking lot they will have a clear view which is depicted in the Board’s packet on page 2.8.
- “That the western edge of the property be surrounded by a high fence, five-foot planting strip, and dense hedge.” Ms. Keithline there is a plan for a hedge around the entire facility to accommodate the neighbor to the west.
- “That the owner will maintain the fence and landscaping at all times. Lighting will be full-cutoff and directed away from abutting residential property owners.” Ms. Keithline stated that in the event a large parking resource is developed in the future they would like to have 16 parking spaces made available to Pediatric Dental Group in exchange for the subject property.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **STEAD**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Special Exception to permit a principal use off-street parking lot (Use Unit 10) in an RM-2 district (Section 401); this is subject to conceptual plan on page 2.7. There shall be a 6'-0" wood screening fence along the south, east and west perimeter, and inside the fence shall be a solid hedge to lessen the impact on the streetscape. Landscaping shall be according to code; all lighting according to code will be shielded down and away from abutting properties. 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:

**LT 3 BLK 1, LT 4 BLK 1, NICHOL'S RESUB L1-6 B1 PARK DALE ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

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**Case No. 21225-Brad Lewis**

**Action Requested:**

Variance of the minimum lot width required in the RS-3 district (Section 403) from 60 ft. to 50 ft. and a Variance of the minimum land area required in the RS-3 district (Section 403) from 8,400 sq. ft. to permit lot splits; a Variance of the side yard required abutting S. Quincy Av. from 15 ft. to 5 ft. (Section 403); and a Special Exception to reduce the required front yards in the RS-3 district from 25 ft. to 20 ft. (Section 403); all to permit residential development. **Location:** SW/c of East 35th Place and South Quincy Avenue

**Presentation:**

**Brad Lewis**, 1212 South Gary Avenue, Tulsa, OK; he stated he is the owner of the two lots located at 1336 and 1340 East 35<sup>th</sup> Place which is on the corner of Quincy and 35<sup>th</sup> Place. He is requesting to have the two lots split into four 50 foot lots. Mr. Lewis read a letter from Steve Carr, Senior Planner for the City of Tulsa, which was included in the Board's packet on page 3.11. The letter stated that the proposed use, design and parking solution of the subject lots would be consistent with many existing lots in Brookside Urban Village. The letter also stated the proposed plan also preserves the critical sight triangle for vehicles and pedestrians on the corner of East 35<sup>th</sup> Place and South Quincy Avenue, and that sidewalks should be considered during the project design and development. Mr. Lewis also read an e-mail from Frank R. Patton, Jr., a property owner who is directly across the street from the subject properties; this e-mail, also included in the Board's packet on page 3.12, states that the proposed design would be consistent with the neighborhood, an opportunity to extend the sidewalks would be a benefit to the neighborhood, and that Mr. Patton is in support of the proposed project.

**Interested Parties:**

**Donna Fisher**, 1341 East 36<sup>th</sup> Street, Tulsa, OK; she stated she has drainage and flooding concerns, parking concerns, wants the proposed project to be compatible with the surrounding neighborhood, and would like to have more details on the proposed project.

Ms. Stead asked Ms. Fisher how many houses in the immediate area are two-story homes, and Ms. Fisher stated that she was aware of one.

**Herb Beattie**, 3474 South Zunis Avenue, Tulsa, OK; he stated he represents Brookside Neighborhood Association Board of Directors and a large group of people in the

neighborhood who have met with Mr. Lewis regarding his proposed project. These two groups are requesting the Board to reject the applications presented by Mr. Lewis, and ask Mr. Lewis to request a PUD hearing. Mr. Beattie stated there is a serious problem of drainage and flooding in the area, and a PUD will permit a cistern or proper management of the flood waters. Mr. Beattie read a letter from Mr. Guy DeVerges, who lives across the street from the subject properties, and the letter was a letter of non-support.

Mr. Henke asked Mr. Beattie if he was the President of the Brookside Neighborhood Association, and Mr. Beattie stated he was not but was a representative for them. Mr. Henke asked Mr. Beattie if he had a letter from the Association stating he given permission to represent them, and Mr. Beattie stated he did not have a letter but that it would be reflected in the Association's minutes from February that the Association requested him to represent them at this Board of Adjustment meeting, and there was a meeting last evening in which he was asked to be their representative.

Mr. Henke asked Mr. Beattie who the board members of the Brookside Neighborhood Association were, and Mr. Beattie stated Larry Bartley is the President and that he, himself, was a board member. Mr. Henke then asked if Stuart Hawley was a board member of the association and Mr. Beattie confirmed that he was. Mr. Henke then stated that Stuart Holly was his brother-in-law, and with that statement, recused himself from this case.

#### **Mr. Henke recused himself from the meeting at 1:35 P.M.**

Ms. Stead owns property in Brookside and is an honorary member of Brookside Association from 20+ years, but she did not feel obligated to recuse herself.

Mr. White asked Ms. Stead if she had a vested interest in the case, and Ms. Stead stated that she did not.

Ms. Stead asked Mr. Beattie if had a problem with her not recusing herself from this case, and Mr. Beattie stated that no matter how Ms. Stead voted, she is a great board member.

Mr. White asked Mr. Beattie how many board members were present at the board meeting last evening. Mr. Beattie stated there was a meeting last week to achieve a consensus and last evening there was a formal vote, 10 or 11 votes were cast, and it was a unanimous vote for him to be the Association's representative.

**Rebuttal:**

Mr. Lewis said that basically 91 out of 112, or 81% of the residential lots in the Oliver's Addition, are less than 60 feet in width making them nonconforming lots. A similar lot-split in the immediate area, 1524 East 35<sup>th</sup> Street, was approved by the Board of Adjustment in a February 22, 2011 hearing, Case No. 21219. Arbitrarily rejecting this application would present an undue hardship by not allowing the same benefits of ownership as 80% subdivision owners.

Ms. Stead stated that only two houses were approved on the lot-split in Case No. 21219, not four.

Mr. Van De Wiele asked Mr. Lewis to address the request for the 20-foot front yard. Mr. Lewis stated that was a Special Exception and that would allow for the rear load parking and garage. Several neighbors have told him that they liked the rear load parking and garage.

Mr. Lewis stated that he presenting a conceptual site plan, and that the property is four lot-splits. What is presented is not condos or townhomes but four single-family homes, and is not a change of use, therefore a PUD is not required.

**Comments and Questions:**

Mr. Alberty told the Board that under a PUD, a person would be required to replat the property, it would go through a full technical advisory committee and a much more intense review than just an issue of a permit. Under the permit process, the City of Tulsa does require a drainage plan, and all the existing utilities must be accessible.

**Board Action:**

On **MOTION** of **VAN DE WIELE**, the Board voted 4-0-0 (Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **CONTINUE** the case to March 22, 2011; for the following property:

**LT 7 BLK 4, LT 8 BLK 4, OLIVERS ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

**Mr. Henke reentered the meeting at 2:01 P.M.**

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**NEW APPLICATIONS**

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## **Case No. 21224-Tony Jordan**

### **Action Requested:**

Variance of the maximum permitted building height in the R district from 35 ft. to an average elevation of 40 ft. (Section 403). **Location:** 4302 South Atlanta Avenue

### **Presentation:**

**Joey Little**, 8922 North 123<sup>rd</sup> East Avenue, Owasso, OK; he stated he represents Tony Jordan Building Company. The subject property is a sloping property in the rear of the house. The house is in an RS-1 district, where the typical setback is 35 feet, and the house is proposed to be set back 95 feet from Atlanta Avenue. The reason for the Variance request is to have future expansion of the house and pool expansion with access from the basement level out to the yard without going back to the second floor to access the back yard.

Mr. Van De Wiele asked Mr. Little how far it was from the rear of the building to the neighbors on the west, and Mr. Little that it was over 100 feet; the lots are 330' x 330' and it is one lot currently with a future possibility to plat the northern lot for a lot-split.

### **Interested Parties:**

**Amir Adib-Yazoi**, 4131 South Lewis, Tulsa, OK; he stated he has flooding concerns, especially since his house sits lower than the subject property and is next to the corner of the subject property. He has installed a French drain on his property to try to alleviate the drainage problem and he wants the property owner to have plans to divert runoff water.

### **Comments and Questions:**

Mr. Cuthbertson suggested to Mr. Adib-Yazoi that he go to Development Services on the 4<sup>th</sup> Floor of City Hall while he is here to express his concerns of the drainage and flooding problems regarding this case.

### **Board Action:**

On **MOTION** of **STEAD**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, "aye"; no "nays"; no "abstentions") to **APPROVE** the Variance of the maximum permitted building height in the R district from 35 ft. to an average elevation of 40 ft. (Section 403). The Board has found that the subject property slopes from a high point on the east side down to 20 feet to the west. The left side elevation appears to suggest that fill will be provided so the south elevation at the building is constant and consistent with the east side or front elevation. This plan suggests that the impact of the higher building height will be experienced on the north and west of the subject property; subject to conceptual site plan pages 4.5, 4.6, 4.7, 4.8 and 4.9. In granting this Variance the Board has found that there are extraordinary or exceptional conditions or circumstances, mainly the topography of the property, 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:

**S/2 SE NW NW NW SEC 29 19 13 & LT 8 BLK 1,41ST STREET & LEWIS ADDN,  
CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

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**Case No. 21226-Andrew Shank**

**Action Requested:**

Appeal the determination from an administrative official regarding the denial of a permit for a digital outdoor advertising sign (Application No. 246571). **Location:** 6618 South 107th East Avenue

**Presentation:**

**Andrew Shank**, 2727 East 21<sup>st</sup> Street, Suite 200, Tulsa, OK; he stated his client has been denied a permit for a digital outdoor advertising sign based on Development Services interpretation of the Zoning Code. Today the Board has the task of interpreting the code and has the authority to wholly or partly reverse, reform or modify that decision. A fairly reasonable interpretation of the Zoning Code supports the client's position that an electronic message center affixed to a traditional outdoor advertising sign is not a digital outdoor advertising sign. An electronic message center is not a digital outdoor advertising sign. They are distinguished in the Zoning Code with separate definitions. Electronic message centers predate digital outdoor advertising signs. Historically in Tulsa the electronic message center was fixed to traditional signs in unlimited nature to text only, better known as the time and temp liners atop billboard signs. Section 18 in the code defines the term of a cutout or extension; a cutout or extension is permissible, and essentially unregulated, as long as it is 15% or less of the display surface area of the sign. They are essentially an extension of the traditional outdoor advertising sign. The Zoning Code makes clear that converting a traditional outdoor advertising sign to a digital outdoor advertising sign is a change in use. A change of use requires permitting and further regulation. Mr. Shank stated that his client's position is the electronic message centers that don't require permits, and essentially go unregulated, are not the same as digital outdoor advertising signs. The Tulsa Sign Advisory Board reviews sign regulations and interpretations. They recommend changes when necessary. They review materials and standards proposed for signs and they recommend information for a comprehensive program. The Sign Advisory Board is a recommending body to the Mayor, City Council, TMAPC, and the Board of Adjustment. Recently this body addressed this issue in discussion and Mr. Shank obtained an audio file of the meeting; they discussed this exact scenario. Mr. Shank asked Ms. Shannon Benge, Administrator for the Sign Advisory Board, to come forward to give the Sign Advisory Board's position.



**Interested Parties:**

**Shannon Bengé**, Administrator for the Sign Advisory Board, and the Inspection Services Manager, City of Tulsa, 175 East 2<sup>nd</sup> Street, Tulsa, OK; she stated when the Sign Advisory Board took on the task of writing language for the digital outdoor advertising signs was a time when digital outdoor advertising signs were trying to break into the Tulsa market, so language was hurriedly formatted to address that need because the existing signing language did not address digital outdoor advertising signs. The Sign Advisory Board decided to address just the full digital outdoor advertising sign, measuring nit levels, brightness levels, etc., and made recommendations. During the adoption process the Sign Advisory Board had received a complaint on a sign similar to today's subject sign near the Broken Arrow Expressway and Harvard. At that time Ms. Bengé contacted the City of Tulsa Legal Department because it would be an enforcement issue if it truly were an digital outdoor advertising sign. City Legal advised that the sign fell under Section 1221.F.9 and it was handled as an extension, did not require a permit and there have been several extensions placed throughout Tulsa since. That is how it has been carried on for several years.

Mr. Van De Wiele asked Ms. Bengé if the earlier situation was different from what was written in the zoning clearance review letter, and she stated that there is a digital sign definition, there is a definition for an outdoor digital sign, and there is a definition for an outdoor advertising sign. The Plan Review staff read the digital sign language and read the outdoor advertising sign language and combined the two languages to make their determination. Whatever the Board's decision is on this issue, it will have a definite impact on how staff enforces the existing signs and the proposed signs in the future.

Mr. Henke asked if Ms. Bengé was stating that the subject sign is an electronic message center and not an electronic variable message sign, because in the Title 42, Section 1800 definition it references electronic variable message sign under digital sign, and Mr. Shank stated an electronic message center that is a cutout or extension and is permissible under the 15%. Ms. Bengé stated that is how it has been viewed up until now; when the language was written, for the digital outdoor advertising signs, it was not considered that a message center would be placed on top of a traditional outdoor advertising sign. Therefore, there are several definitions that were existing and new definitions that were added and all that language has been under discussion and become clearly defined. Ms. Bengé stated that there are several definitions that a person can select from their interpretation, but the enforcement has taken the advice of the City Legal Department and applied it in that nature for several years.

Mr. Henke asked Ms. Bengé if City Legal was saying this constitutes the electronic variable message sign or a digital sign. Ms. Bengé deferred to City Legal.

Mr. Boulden stated he had given his advice to Development Services, they have made the decision and it is Development Services call.

Ms. Bengé stated the problem is that old language is being applied to new technology, and City Legal and the Sign Advisory Board are working together to revise the language.

Mr. Van De Wiele asked Mr. Boulden where in the code the electronic message center or board sign definition is used. Mr. Boulden said it was actually adopted after incorporating the digital outdoor advertising sign provisions, when the provisions for the roof signs, particularly in the downtown area, were considered and passed by the City Council. There was a concern that there not be message centers on the signs, though it was never really defined so it was adopted. Mr. Van De Wiele then asked Mr. Boulden if the defined term was used in the outdoor advertising section of the code, and Mr. Boulden stated that it came afterwards.

Mr. Boulden told the Board in Section 1221.G.13, this particular provision was crafted at the time the City was conscious of outdoor advertising signs, because the City was conscious of the pre-existing outdoor advertising signs could be considered a digital sign. This was intended to prevent any pre-existing message center sign being converted to digital outdoor advertising sign until it went through the same review that any new digital outdoor advertising sign or LED sign went through. Mr. Boulden stated that he pointed this out only because at the time the City adopted provisions governing digital outdoor advertising signs, the City specifically did not want the message center signs to be converted into digital outdoor advertising signs. The question is now, since the device was added after the fact, is it a digital outdoor advertising sign or is it something else.

**Bill LaFortune**, 2100 South Utica Avenue, Suite 210, Tulsa, OK; he stated he represents Lamar Outdoor Advertising. The City has told and implied to Ms. Lorinda Elizando, the Sales Representative for Lamar Outdoor Advertising, that the message center she is selling is a digital outdoor advertising sign; the message board that has variable letters and gives advertising messages is a digital outdoor advertising sign. Lamar's concern is that they have complied with the City's interpretation of the code, now if the Board upholds this appeal the rules would be changed. To install this small lighted device on top of the subject sign Lamar, in conjunction with the City, there was a minor amendment to add LED technology to an existing outdoor advertising sign thus allowing the north face to be digitalized. Then Lamar came before the Board to have spacing verification approved and get the permit to install the digital outdoor advertising sign for the south face.

Mr. White asked Mr. LaFortune when the City said the electronic message board made the subject sign a digital did the City imply whether it was just the message board or the entire sign, and Mr. LaFortune stated the City implied it was just the message board, the message board would convert it to a digital outdoor advertising sign and Lamar was told the message board is a digital outdoor advertising sign in of itself.

Ms. Stead asked Mr. LaFortune if that meant the whole sign could be converted to a digital sign, and Mr. LaFortune confirmed. Mr. LaFortune stated that TMAPC had given

approval in October, 2008 to convert the whole sign to digital because it is in a corridor. This Board had given spacing verification approval prior to the TMAPC corridor approval minor amendment approved adding LED technology to an existing outdoor advertising sign. By definition the subject sign is an electronic variable message sign which means it is a digital sign, and by definition a digital outdoor advertising sign is an outdoor advertising sign, which is a digital sign. Therefore the electronic message center is a digital sign.

Mr. Shank came forward and stated that Ms. Bengé had to leave the meeting due to a previous appointment; therefore, Ms. Margo Heyne-Bell with the City of Tulsa and with the Sign Advisory Board, will take Ms. Bengé's place to answer any questions should they arise.

**James Adair**, 7508 East 77<sup>th</sup> Street, Tulsa, OK; he stated he has been on the Sign Advisory Board for 23 or 24 years. At the last meeting he abstained from a vote because this issue is more complicated than he could understand. He could not get a grasp on past signs, new signs, existing signs, added signs, digital signs, how to classify digital, etc. If the sign covered in a digital display, which the Board understands has pictures, what if the sign only had words? There were so many things involved that he could not make a decision at the Sign Advisory Board meeting, so he abstained. Mr. Adair stated the City is updating the sign code to bring it all together, make it comprehensive, make it understandable, so this Board can understand the code and make a decision and true hardships will be determined.

Ms. Stead asked Mr. Adair to give his opinion of the addition or cutout, if they were considered digital signs. Mr. Adair stated that at the last Sign Advisory Board meeting he attended, they spoke less about cutout or digital signs than has been discussed at today's meeting. After hearing the discussion at the Sign Advisory Board meeting and hearing the discussion at today's meeting, Mr. Adair stated he is still unsure.

Mr. Boulden asked Mr. Adair if Mr. Sam Stokely is a member of the Sign Advisory Board, and Mr. Adair stated Mr. Stokely was a member. Mr. Boulden asked if Mr. Stokely voted at the last meeting, and Mr. Adair stated that Mr. Stokely had abstained from the vote and comments; he was not going to give an opinion the Sign Board.

Mr. LaFortune came forward and stated what this Board is dealing with are definitions which can be read by each individual, and what the definitions are showing is that it is a digital outdoor advertising sign in and of itself. Whether it permeates on down it is an electronic variable message sign as defined by the code.

Mr. Van De Wiele asked Mr. LaFortune if he had permitted a regular outdoor advertising sign and installed a cutout on top of that sign, would he then allow the sign to be converted to a digital sign without coming back before the Board for spacing verification. Mr. LaFortune stated he would advise any company to get a verification of spacing. The reason this is before the Board today is because when the code amendments were

completed for adding the digital outdoor advertising the code for spacing was changed, which affected the 1,200 feet spacing.

**Lorinda Elizando**, Lamar Outdoor Advertising, 7777 East 38<sup>th</sup> Street, Tulsa, OK; she stated when she proceeded to make the subject sign a digital outdoor advertising sign, which this sign is one of four more signs that are proposed to be added to the market, in October or November 2010, she met with the City and she specifically asked what to do because she did not want to receive any deficiency letters, even though there is a provision that allows for the extension for the extra 15% of square footage allowed on the display surface area of the face. Ms. Elizando stated that if she had allowed the extension to be installed without a digital permit, she would have been in trouble; this is definitely a digital billboard. She stated she is not present to speak against Mr. Bill Stokely; this will affect her business because she plans to have three more in the market to display gas prices. She had to make sure she was on conforming board with the correct zoning, the right amount of frontage, everything being in a PUD or getting a TMAPC corridor, to make sure the billboard can be erected. Lamar has billboards across the street from their own billboards that have a digital display, a full digital display. In order to plan the gas prices display, she has had to relocate and find a billboard that is 1,200 feet away from any other billboard that has digital on it. In Section 1221.G the code stipulates "that no such sign shall be modified, extended, or enlarged unless and until its installation or use has been permitted as a digital outdoor advertising sign on or after May 1, 2008, in compliance with this Section 1221." This section told Ms. Elizando that she had to go back and get a digital permit. She has come before the Board of Adjustment and received approval on spacing verification without telling the Board about sizes. So far digital is a use and there is nothing that stipulates sizes because that is a permitting issue. The definition for a sign is, "Sign, outdoor advertising, a sign which directs attention to a business, commodity, service or entertainment sold or offered elsewhere in the lot which it is located. Digital sign, sign which displays an advertisement or message which is generally electronically and commonly used as computerized or electronic digital technology. Sign, electronic message center or board, a digital sign which displays a static or scrolling message." All this meant Ms. Elizando had to receive a permit, which she did.

Ms. Stead stated that in BOA Case No. 21161, October 26, 2010, the Board approved the attachment to the Lamar sign, but on September 28, 2010 the Board approved, subject to the usual caveat, the Stokely sign. Ms. Elizando stated she remembered the October 26<sup>th</sup> approval because the Board had asked Ms. Elizando if she was aware of the Stokely sign. Ms. Stead stated the Lamar sign was constructed prior to the Stokely sign but had approved only the attached digital. Ms. Elizando stated the sign was existing, and most signs are, and she then came before the Board for the digital. Ms. Stead stated that is unfair to the industry that everyone is not on the same page; if both billboards are allowed there will be a precedent set. Ms. Elizando stated that when she applies for a permit, the City looks at maps to locate the billboards, and that there is room for improvement regarding regulation of the code and enforcement, but it is a risk she takes as a business person when applying for a permit. The code, as it is currently

written, is good; she knows she has limitations, has to check her locations, and to make sure everything is properly filed and permitted.

Mr. Boulden asked Ms. Elizando if the subject sign is fully equipped to become a full faced digital outdoor advertising sign, and Ms. Elizando confirmed that it was fully equipped and ready to become a digital outdoor advertising sign. Mr. Boulden asked Ms. Elizando why Lamar didn't just convert the sign to become a full digital sign. Ms. ELeizando stated that Lamar is based in Baton Rouge, Louisiana and with the economic times there is only so much funding, therefore, the company is really scrutinizing where the signs are being placed. The current customer wanted full digital but it could not be funded therefore the attachment was offered as alternative and accepted by the customer. The subject sign is built to support the digital face on both sides and can be upgraded in the future.

Mr. Boulden asked Ms. Elizando if the attachment had been placed to beat Stokely in the placement of a digital sign, and Ms. Elizando stated that she would not say that. She had spoken to Mr. Sam Stokely, when she came to ask for approval on verification of spacing, and asked Mr. Stokely why he was there, because she knew Stokely had been turned down by the TMAPC. She stated Mr. Stokely said he was not aware of that. Ms. Elizando stated this all was timing, absolute timing, and unfortunately she and Mr. Stokely are on different teams.

**Margo Heyne-Bell**, Supervisor of the Sign and Site Inspections Group, City of Tulsa, 175 East 2<sup>nd</sup> Street, Tulsa, OK; she stated she has a letter of deficiency issued on November 8, 2010 to Lamar. Through the Open Records Act, Mr. Shank obtained Lamar's response. The response letter stated the engineer's signed plan and calculations of 2008 prove the billboard was designed and can accommodate one 10,000 lb. digital billboard. The letter also stated the digital billboard face that was installed weighed 7,100 lb. thus leaving 2,900 lb. The digital LED message board, applied for on application permit no. 24189, weighed 750 lb. which is well within the parameter the structure can hold.

Ms. Elizando stated that the message boards or signs built today weigh less than the signs built in 2008; therefore, the structure would and could hold another digital message board.

**Mr. Alberty stepped out of the meeting at 3:27 P.M.**

**Rebuttal:**

Mr. Shank came forward and stated that Stokely did a major amendment that was appealed all the way to the City Council. A digital face costs approximately \$350,000, was ordered, and is shipped to the location. In a 30-day window a bookmark was

installed under the interpretation of a city official that Stokely feels does not comport with the broad context of the zoning code which this Board is tasked with enlightening the clients with today. Electronic message center cutouts exist and show this was not intended to be a digital outdoor advertising sign. There is ambiguity in the terms. Ms. Bengé was here today to say why the ambiguity exists in the zoning code. City Legal talked about the grandfather clauses. In the aggregate that is plenty of material for this Board to make a fair and reasonable determination. By affixing an electronic message center to a traditional outdoor advertising sign does not create a digital outdoor advertising sign.

**Mr. Alberty came back into the meeting at 3:31 P.M.**

Mr. Van De Wiele stated that by strictly looking at the definitions of the code, the electronic message center or board is defined as a digital sign and a digital outdoor advertising sign is an outdoor advertising sign which is a digital sign, so he asked Mr. Shank how the Board can arrive at any other conclusion that by attaching a display on top makes it a digital sign. Mr. Shank stated that by interpreting the code and going back to Ms. Bengé's testimony today that is not what was intended. City Legal has alluded to that today also. The Sign Advisory Board has made a recommendation that the industry feels that is not the result that is intended either. Mr. Van De Wiele stated the definition does not sound like it is used in the code for the billboard, and if it is not used in the billboard arena, Mr. Van De Wiele stated he cannot interpret it for Mr. Shank's or Mr. Shank's client's benefit.

Mr. Van De Wiele asked Mr. Shank which sign was new, and Mr. Shank stated that Stokely's sign was the new one. The picture, shown today, of the proposed Stokely billboard, is a frame structure because the job came to a halt when the bookmarker was placed on top of the Lamar billboard.

Mr. Shank stated he knows the Board is in a tenuous position but he is asking the Board to make a fair and reasonable interpretation, essentially acknowledging that the section of the code pertaining to digital outdoor advertising signs is poorly written. As Ms. Bengé discussed today, cutouts exist and that why there is a city history of the message boards being installed without permits or regulations. As Lamar's counsel conceded today, this is the first permit, the first time a bookmarker has been treated as a permissible digital sign. That shows the Board that this term was included in the revisions of 2008 with the good intentions of revision.

Ms. Stead stated as the sign code was originally written, "the space limitation of 1,200 feet, which Council approved but was not recommended by the Sign committee, shall not apply between signs separated by a freeway". Therefore, there are many

inconsistencies in the sign code and the inconsistencies end up before the Board of Adjustment.

**Bill Stokely**, 3603 Orange Circle, Broken Arrow, OK; he stated the reason a sign has not been erected on John Q. Hammons property is because no one would pay the amount of money he wanted, but Mr. Stokely thought the LED signs were making so much money that he could afford to pay Mr. Hammons. Mr. Stokely made a deal with Mr. Hammons and started the process of erecting a LED billboard. The Sign Advisory Board was formed for only one reason, to make decisions. The Sign Advisory Board did give a decision and he asks the Board of Adjustment to make the same decision.

Mr. Van De Wiele asked Ms. Heyne-Bell if the bookmarker at the top of the Lamar sign were to come down and a full digital billboard were to be installed, if that requires a permit. Ms. Heyne-Bell stated if this Board were to recognize the application for an digital outdoor advertising sign, there and there was going to be a modification to what is on site now a permit would be required, at a minimum an electrical permit would be required because the electrical configuration would be changed. The other issue would be the additional weight on the billboard. The LED would have to be addressed. In the past it was recognized there were more spacing verifications given than could be installed. The city recognized that the first billboard to pass its final inspection would be the one deemed valid.

Mr. Van De Wiele asked Mr. Stokely when he started constructing his sign across from the Lamar sign, and Mr. Stokely stated it was approximately two months ago. Mr. Van De Wiele asked how long it took for the sign to reach the state it is in now, from start to finish. Mr. Stokely stated the sign faces had just been installed, last week. Mr. Van De Wiele asked Mr. Stokely how long it took to get from the beginning of structure to what it looks like today. Mr. Stokely stated it took about three or four weeks. Mr. Van De Wiele asked Mr. Stokely if he knew when Lamar installed the digital display sign on top of their billboard. Mr. Stokely stated Lamar installed it just before he was going to install the LED on his sign.

Mr. Bill LaFortune came forward and stated the Board needs to consider how long it has taken Ms. Elizando to complete all the steps she completed to get the cutout placed on top of the Lamar sign.

Ms. Elizando came forward and stated that she has a fax stating the sign was installed September 10, 2010, and that her LED was in place prior to Mr. Stokely starting construction on his sign.

Ms. Stead stated she has a possible solution. There is a month that separates the two approvals. The Board knew this was going to happen. It is not the job position to make any person or company money, but she does not want to think she is ever unfair. Is it possible for the Board to specifically prohibit Lamar from modifying their billboard into a full digital?

Mr. Boulden stated that the Board's motion could be that the Board's interpretation of the code is that the digital message center sign on Lamar's billboard does not constitute a digital outdoor advertising sign for the spacing requirement. Then, if Stokely had a full digital outdoor advertising sign in place before Lamar's full digital outdoor advertising sign in place, Lamar would be blocked because they would not have the first claim. The the Board would then have to determine that the bookmarker is not a digital outdoor advertising sign. If an appeal were taken to District Court, the appeal would freeze everything.

Mr. Boulden made a suggestion for the motion the Board is getting ready to make, if the Board wants to uphold the appeal in favor of the appellant, Stokely. The Board's motion should be crafted similar to this, that the Board interprets the zoning code to provide that a digital cutout or extension to an existing non-digital outdoor advertising sign does not constitute a digital outdoor advertising sign for purposes of the spacing requirement imposed by the zoning code.

**Comments and Questions:**

Mr. Alberty stated he had something to say and it is not to take sides in any event. He is going to say what the Board is instructed to do. Mr. Alberty stated the Board is instructed to interpret to code, not interpret what the intent was. What the Sign Advisory Board has given the Board is what they thought the intent was. The Board is being asked to interpret the code. Based on that, however, the Board interprets the code, as its obligation.

Ms. Stead stated there is not a clear interpretation in this instance.

**Board Action:**

On **MOTION** of **VAN DE WIELE**, the Board voted 2-3-0 (Henke, Van De Wiele "aye"; Stead, Tidwell, White "nay"; no "abstentions") to **DENY** the Appeal the determination from an administrative official regarding the denial of a permit for a digital outdoor advertising sign (Application No. 246571), finding that the south side of the Lamar sign involved, that is within the 1,200 feet spacing limitation, is a digital outdoor advertising sign; for the following property:

**LT 2 BLK 1, TULSA COMMONS, THE PRT RSB PRT L1 B1 THE BEDFORD, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

On **MOTION** of **WHITE**, the Board voted 3-2-0 (Stead, Tidwell, White "aye"; Henke, Van De Wiele "nay"; no "abstentions") to **UPHOLD** the Appeal the determination from an administrative official regarding the denial of a permit for a digital outdoor advertising sign (Application No. 246571), finding that the Board interprets the presence of the cutout sign not to be the determination of the digital category for the entire signage; for the following property:



**LT 2 BLK 1, TULSA COMMONS, THE PRT RSB PRT L1 B1 THE BEDFORD, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

Mr. Shank came forward and asked for a clarification on the motion before the show of hands for the vote. Mr. Shank asked if the Board meant to say they would be granting the appeal instead of upholding the appeal. Ms. Stead said the Board must uphold the appeal. Mr. Boulden stated that upholding the appeal will be in favor of the appellant Stokely.

**Mr. Tidwell stepped out of the meeting at 4:04 P.M.**

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**Mr. Van De Wiele stepped out of the meeting at 4:06 P.M.**

**Mr. Tidwell reentered the meeting at 4:07 P.M.**

**Case No. 21227-Larry Robinson**

**Action Requested:**

Variance of the maximum floor area permitted for a detached accessory building in the RS-3 district (Section 402.B.1.d) from 737 sq. ft. to 900 sq. ft. **Location:** 2843 West Haskell Place

**Mr. Van De Wiele reentered the meeting at 4:09 P.M.**

**Presentation:**

**Larry Robinson**, 2843 West Haskell Place, Tulsa, OK; he stated he is going to build the building to store his collector cars.

Mr. White asked Mr. Robinson what his neighbors had to say about the proposed building. Mr. Robinson stated the house on the east side is owned by him and his son is living in the house, and the house on the north side cannot see the area where the proposed building is going to be built.

**Interested Parties:**

**Lillie Davis**, 661 North 26<sup>th</sup> West Avenue, Tulsa, OK; she asked what the proposed building was going to be used for, mainly if the building was going to be used for business.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **STEAD**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Variance of the maximum floor area permitted for a detached accessory building in the RS-3 district (Section 402.B.1.d) from 737 sq. ft. to 900 sq. ft. The Board finds the garage/workshop is 30' x 30' and is being built containing approximately 9,450 sq. ft. or 1.4 times the permitted RS-3 square footage. The new building is 74.24 sq. ft. larger than permitted based on the size of the dwelling; this is per conceptual plan on page 6.6 and will meet all setback requirements, will provide the required livability space for the RS-3 district, the maximum height limitation will be met. In granting this variance the Board has found the larger size lot containing the 9,450 sq. ft. are reasons 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:

**Lt 8, Blk 2; Skyline Ridge 6<sup>th</sup> Addition, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

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**Case No. 21228-Kurt Dodd**

**Action Requested:**

Variance of the rear yard requirement in the RS-2 district (Section 403) from 25 ft. to 7 ft. - 9 in. to permit an addition to an existing dwelling. **Location:** 4184 East 48th Place

**Presentation:**

**Kurt Dodd**, Stone Creek Commercial and Residential Company, 9501 East 108<sup>th</sup> Street, Tulsa, OK; he stated he is requesting a variance due to strange layout of the lot.

The house was built prior to 1970 and has a courtyard. In this courtyard are a third-car garage and an additional storage space over the garage, thus making a portion of the structure two-story, is proposed.

**Mr. White stepped out of the meeting at 4:13 P.M.**

**Interested Parties:**

**Jim Briden**, 4184 East 48<sup>th</sup> Place, Tulsa, OK; he is owner of the subject property and would like to improve the property with a third garage.

**Comments and Questions:**

None.

**Mr. White reentered the meeting at 4:16 P.M.**

**Board Action:**

On **MOTION** of **STEAD**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Variance of the rear yard requirement in the RS-2 district (Section 403) from 25 ft. to 7 ft. - 9 in. to permit an addition to an existing dwelling. The applicant wishes to reconstruct an existing attached garage on the north side of a one-story dwelling, in accordance with conceptual plan on page 7.6. The home existing was built prior to 1970 before the current zoning code. The dwelling with the proposed addition appears to be consistent with the established development pattern, both front and side yards being maintained. In granting this variance the Board finds by reason of extraordinary or exceptional conditions or circumstances, the peculiar shape of the lot, 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:

**LT 6 BLK 34, PATRICK HENRY B24-37, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

\* \* \* \* \*

**Case No. 21229-Shonna Crosby**

**Action Requested:**

Verification of the spacing requirement for a family day care home of 300 ft. from another family day care home on the same street (Section 402.B.5.g). Request is for a full refund for the application for a verification of spacing because it has been withdrawn. They had made the application upon staff's incorrect observation, therefore, the application is not necessary. **Location:** 417 East Latimer Court

**Presentation:**

The applicant was not present; no presentation was made.

**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, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **GRANT** the request for a full refund of \$242.45; for the following property:

**E10 LT 31 & ALL LTS 32 THRU 34 & S7.5 VAC ALLEY ADJ ON N BLK 3, DOUGLAS PLACE ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

\* \* \* \* \*

**Case No. 21230-Bill LaFortune**

**Action Requested:**

Variance of the parking requirement for an existing commercial building from 39 to 30 on-site spaces (Section 1200). **Location:** 3920 South Peoria Avenue East

**Presentation:**

**Bill LaFortune**, 2100 South Utica Avenue, Suite 210, Tulsa, OK; he stated he has a detailed presentation for the Board but due to the late hour he is willing rest on the narrative unless there is a problem in determining the hardship he would like to make the presentation. Mr. LaFortune stated he has received one objection letter from Poseiden Adventures, owned by Mr. Randy Piper, and Mr. Piper is present at this hearing. Mr. LaFortune has met with Mr. Piper, and they agreed that if the Board were to grant the variance, that the Board could impose a condition with the granting of the variance that would require the owner of Fit For Her to place a barrier on the boundary to stop a car from driving from one side of the parking lot to the other, and the barrier would have signage that would say Poseiden Adventures parking only beyond this boundary violaters will be towed at their own expense. The owner of Fit for Her has

agreed to stripe the parking spaces 23 through 30 along the southern edge of the parking lot.

**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, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Variance of the parking requirement for an existing commercial building from 39 to 30 on-site spaces (Section 1200), finding the hardship to be the available space and parking space usage timing is different from the adjoining businesses to provide minimal conflict. There is to be a condition that a functional barrier be installed along the north property line from the east face of the building out to the east property line to prevent traffic from crossing from the south to the north onto the Poseidon Adventures property and with a sign placed there warning drivers to not to park on the Poseidon Adventures property or they would be subject to tow. 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:

**LTS 5 THRU 7 BLK 1, ROBERTS SUB AMD TR 3 BROCKMAN'S SUB, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

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**Case No. 20874-A-The Learning Kurve Childcare Center**

**Action Requested:**

Amendment to a condition of a previous approval to extend or eliminate the two-year time limitation for a child care center in the RS-3 district. **Location:** 1619 North Boston Place

**Presentation:**

The applicant had to leave the meeting to pick up children for the childcare center; no presentation was made.

**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, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Amendment to a condition of a previous approval to extend or eliminate the two-year time limitation for a childcare center in the RS-3 district. Finding that the applicant has, for the last two years, run a very fine facility for the children, letters in support of the applicants activities are numerous. In making this determination the Board is inclined to eliminate the two-year time limitation or the conditions applied to the original approval that remain in force. However, the Board may apply any additional conditions deemed necessary and/or reasonably related to the current or original request to ensure the childcare center on the small or reduced parking is compatible and non-injurious to the surrounding area; for the following property:

**LT 17 BLK 1, MELROSE 2ND ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

\* \* \* \* \*

**Case No. 21231-James Adair**

**Action Requested:**

Variance of the requirement that a projecting sign shall not extend above the top of the parapet or building wall on which it is located (Section 1221.C.11); and a Variance of the maximum height permitted for a projecting sign from 25 ft. to 35 ft. - 11 in. (Section 1221.E.1). **Location:** 2638 East 11th Street

**Presentation:**

**James Adair**, 7508 East 77<sup>th</sup> Street, Tulsa, OK; he stated he represents the owner, Aaron Meek, who is restoring the 1927 building. The building has been added to the National Historic register in September 2010. This building is the first retail center of Tulsa and was originally built in the country; retail business was on the first floor and the second floor was the Campbell Hotel. Aaron Meek has taken on a massive project to restore the building by converting part of the main floor back to retail business. He is taking the old Campbell Hotel and revising it to be a scenic place with history and memories; each room will be different and creative. To add to the historic value of this building Mr. Meek wanted to install a sign that is a duplicate of the original days, which has already been installed with the approval of Mr. Jack Page on the condition that if the Board of Adjustment did not approve this variance request the sign would be removed within 30 days and Mr. Meek has agreed to this stipulation. The sign extends above the roof line three feet, and projects outward with a 25'-0" maximum at the property line; the building is behind the property line several feet so the actual variance is five or six feet but would like for the variance to be 35'-11". The sign does not flash, does not move, is

not digital, it is a plain sign reminiscent of the past and built like the old type of construction.

Mr. Henke stated that a letter had been received from Amanda DeCort, Preservation Planner, City of Tulsa stating her recommendation of approval for the sign.

Ms. Stead asked Mr. Adair if he needed to obtain a city access agreement, and Mr. Adair stated the centerline to the curb is the 35'-0" setback; the curb to the front of the building is 9'-6"; therefore, was enough footage span on the property and did not overhang the right-of-way.

Mr. Boulden suggested to the Board, that if they were to approve the variance requests, they should word their motion showing the fact that the building is on the National Historic Registry and the literal interpretation application of the code would work an unnecessary hardship on this property and would destroy it's historic character; by not allowing the sign would be inconsistent with the building's historic nature.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **VAN DE WIELE**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Variance of the requirement that a projecting sign shall not extend above the top of the parapet or building wall on which it is located (Section 1221.C.11); and **APPROVE** a Variance of the maximum height permitted for a projecting sign from 25 ft. to 35 ft. - 11 in. (Section 1221.E.1). The Board has found that the building involved is listed on the national historic register and the failure to approve these variances would diminish its character as a historic site. By reason of these 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, subject to as built in photos presented at today's meeting; for the following property:

**LT 17 BLK 1, MELROSE 2ND ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

\* \* \* \* \*

## **Case No. 21232-James Boswell**

### **Action Requested:**

Variance of the parking requirement from 27 to 24 spaces (Section 1212.D); a Variance of the setback from the centerline of an abutting street for a parking area within 50 ft. of an R district (Section 1302.B); a Variance of the requirement that no parking space be located more than 50 ft. from a landscaped area containing a tree (Section 1002.B & C); a Special Exception to modify the screening requirement for a Use Unit 12 use from an abutting R district to the east (Section 212.C); and a Special Exception to permit required parking on a lot not containing the principal use (Section 1301.D); all to permit a restaurant use on the subject property. **Location:** SE/c of South Peoria Avenue and East 13th Street

### **Presentation:**

**James Boswell**, Architect, 1305 East 15<sup>th</sup> Street, Suite 201, Tulsa, OK; he stated he has a lengthy presentation but due to the late hour he will forego the presentation and answer any questions from the Board.

Mr. Henke asked the Board members if they had any questions of Mr. Boswell at this point. Ms. Stead confirmed she had a question.

Ms. Stead asked where the property on Peoria Avenue ended, going south, because of the lack of sidewalks. Mr. Boswell stated the building is right on the south property line, and the sidewalk that is not there is actually the neighbors' area. Mr. Boswell stated the sidewalks for the subject property would be maintained on Peoria and 13<sup>th</sup> Street. Also, an agreement would be made with the city for the landscaping and a lot combination has been discussed but it has become complicated because of an LLC that owns the property next door and the LLC's financing.

Mr. Cuthbertson stated the alternative to a lot combination would be a tie agreement. Mr. Boswell stated that after a conversation he had with Mr. Roy Johnsen, Mr. Johnsen stated that a tie agreement would be the easiest solution, and Mr. Boswell stated there is no problem with a tie agreement.

### **Interested Parties:**

**Jim Park**, 1708 South Delaware Avenue, Tulsa, OK; he stated he requests the Board to reject the application. He owns the property east of the subject property, which is next to what would be a parking lot. He feels the proposed restaurant, Phat Philly's, would be detrimental to the residential area because of the weekend hours, especially with no barrier between the house and the parking lot.

Mr. Henke asked Mr. Park if he had an opportunity to read the staff comments regarding the subject property, and Mr. Park stated he had not read them. Mr. Henke stated the subject property is zoned CH, which is commercial high zoning. Mr. Henke asked Mr. Park if his objections were against the parking area. Mr. Park stated that if decisions



are based on zoning, then the proposed restaurant would only have seven parking spaces.

Mr. Van De Wiele asked Mr. Park why he thought there were only seven parking spaces for the proposed restaurant. Mr. Park stated the 50 foot restriction and there is no barrier wall, which means nighttime patrons will be pulling into the alley with their headlights on and delivery trucks will be parked in the alley.

Ms. Stead reminded Mr. Park the lot is zoned commercial, therefore no other type of business is going to occupy the lot other than a commercial business. Mr. Park stated his main objection to the proposed restaurant are the weekend hours, midnight to 4:00 A.M. on Friday and Saturday, and the live Reggae music piped outside. Ms. Stead stated that would happen if there were tables placed outside, and Mr. Park stated there were a few tables on the east and north side of the building on the proposed plan. Mr. Park stated he did not have an objection to a restaurant opening on the lot, but he did have a problem with the long weekend hours.

Mr. Cuthbertson stated the city did not have zoning code that addressed the hours of operation of a business, but the city does have ordinances that relate to nuisances and ordinances that relate to noise. Therefore, if a commercial property is being used in a manner that violates those ordinances that relate to noise, the city can enforce those.

Mr. Park stated he understood there were ordinances that could be enforced but once a nuisance is allowed into the area, it would be hard to rid the neighborhood of a nuisance. He owned property on 15<sup>th</sup> Street next to the Tap Room bar; the drunks were a true dirty and loud nuisance so he knows what late or early morning hours at a bar business can mean.

Mr. Tidwell asked Mr. Park if he had problems with the day labor establishment across the street, and Mr. Park stated that he did not have a problem with the labor business, the office supply business, the auto mechanic on the northwest corner, or the new catering business across the street. Mr. Park stated he would like to see the area developed because he would like to build three or four units on his property.

Ms. Stead told Mr. Park that the designation "restaurant" allows one-fourth of the square footage for a bar, therefore, the proposed building would not be a bar but a restaurant. Mr. Park stated that would be fine but people still become as intoxicated with a one-fourth bar as a full bar. He still objects to the midnight to 4:00 A.M. hours on Friday and Saturday.

Mr. Van De Wiele asked Mr. Park if he would be satisfied if the Board did not approve the Special Exception for the screening requirement. Mr. Park stated he would consider it if the lighting were addressed and if additional parking spaces were addressed also.

**Andy Leithner**, 1611 South Elwood Avenue, Tulsa, OK; he stated he owns the properties at 1306, 1312, and 1314 South Quaker. Mr. Leithner stated he had concerns

with parking and business hours, but after discussion with Mr. Thomas Regan, who is one of the owners of the new proposed restaurant, he feels comfortable with the project. He presented his apartment tenants with information on the proposed project and asked them if they had any concerns. Mr. Leithner said, basically, what he will need to do is install warning signs stating no parking in this area or be towed. Mr. Leithner continued to say he is in favor of the proposed restaurant.

**Mr. Alberty left the meeting at 5:02 P.M.**

**Rebuttal:**

Mr. Boswell stated the restaurant will have a bar area and will be a beer and wine license with no liquor. The new owners of Phat Philly's own Quizno's on 15<sup>th</sup> Street so they know the business, and have partnered with the original owners of Phat Philly's. There is no outdoor stage and no plans for outdoor music for the proposed for the new restaurant.

Mr. Van De Wiele asked Mr. Boswell to address his request for the Special Exception to relieve the screening requirements. Mr. Boswell stated that adjacent to lot 15 is the apartments owned by Mr. Leithner, and that is the parking for the apartments, so it was thought that screening was not necessary to screen parking from parking. It was also thought that a screening fence on the property line along the alley would not be practical or feasible because it would limit the applicant's access to the alley and would not last very long. If Mr. Park did develop his property in the future a screening fence on his side of the alley could be addressed at that time.

Mr. Park came forward and asked the Board if he could authorize the screening fence on his property, because it would be a solution. Ms. Stead stated that Mr. Park and Mr. Boswell could reach an agreement between themselves but the Board could not make the agreement. Mr. Park stated he would withdraw his objections and work out a solution with the applicant.

Mr. Cuthbertson suggested to the Board that in the motion there be a condition for the screening element to be between the row of parking and the dwelling on the abutting lot to the east.

**Mr. Alberty reentered the meeting at 5:05 P.M.**

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **VAN DE WIELE**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** a Variance of the parking requirement from 27 to 24 spaces (Section 1212.D); a Variance of the setback from the centerline of an abutting street for a parking area within 50 ft. of an R district (Section 1302.B); a Variance of the requirement that no parking space be located more than 50 ft. from a landscaped area containing a tree (Section 1002.B & C); a Special Exception to modify the screening requirement for a Use Unit 12 use from an abutting R district to the east (Section 212.C); and a Special Exception to permit required parking on a lot not containing the principal use (Section 1301.D); all to permit a restaurant use on the subject property. The Board will make this subject to a tie agreement between the two lots which comprise the subject property and subject to a screening element between the subject property and the residential lot to the east, said element to be provided by the subject property owner and will be a 6'-0" wood stockade type fence; subject to the conceptual plan on page 12.7. The Board will also further require that the subject property owner construct and maintain sidewalks on Peoria Avenue and on 13<sup>th</sup> Street sides of the lots in question, that the lighting on the property shall be shielded down and away from the abutting R district. Finding that by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to this land 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. 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; for the following property:

**LT 15 BLK 1, LT 16 LESS BEG NWC E10.71 SW21.42 TO PT ON WL N18.55 POB BLK 1, BELLVIEW ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

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**Case No. 21233-Bill LaFortune**

**Action Requested:**

Special Exception to permit an underground private gun range (Use Unit 2) in an IL district (Section 901). **Location:** 7630 East 42nd Place South

**Presentation:**

**Bill LaFortune**, 2100 South Utica Avenue, Suite 210, Tulsa, OK; he stated there is a proposed warehouse to be built on the parking lot west of the existing building on the subject property. The warehouse will be a Use Unit 23 use under the zoning code and used by right in the IL zoning district where the subject property is located. The entire proposed building will be approximately 6,000 square feet; approximately 3,000 square

feet will be an area housing classic cars and the remaining area of the building will be comprised of two floors approximately 1,470 square feet per floor. The uses for these two floors will be office and potential dwelling space. TMAPC is set to approve on March 16<sup>th</sup> proposed amendments to the zoning code, which if approved by the City Council, will permit accessory dwellings for the purpose of security or owner or management in all industrial districts within the warehouse. The special exception being sought today is for a private gun range built underground directly below the warehouse. Such a gun range would fall under Use Unit 2, areawide special exception uses and pursuant to Section 1202.A of the zoning code would be permitted in the IL zoning district only by special exception approved by the Board of Adjustment. The gun or firing range will be completely below grade; it will be totally enclosed and poured in concrete which will restrict all firing activity within and there would be no chance of physical impact on surrounding properties as a result. Due to the massive concrete structure as well as baffling, which will be installed in the ceiling of the range, any firing sounds would be effectively restricted or muffled. Most of the target shooting would be at night or on weekends when the neighboring businesses would not be in operation. There has been a letter of support received from Mr. John Reeves, owner of Speedsports Auto, and Mr. LaFortune's client is proposing to buy the Speedsports property but a lot-split has been discussed.

**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, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Special Exception to permit an underground private gun range (Use Unit 2) in an IL district (Section 901), 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; subject to conceptual plan on page 13.7; for the following property:

**BEG ON S.L. 42ND PL. S. & 200 NW OF NW COR BLK 4 IND. EQUIP. CENTER TH SW 270 NW 200 NE 270 SE 200 TO BEG, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

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**OTHER BUSINESS**

None.

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**NEW BUSINESS:**

None.

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**BOARD MEMBER COMMENTS:**

None.

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There being no further business, the meeting adjourned at 5:23 p.m.

Date approved: 3/22/11

Frank X. Hernandez

Chair