

BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1058
Tuesday, October 25, 2011, 1:00 p.m.
Tulsa City Council Chambers
One Technology Center
175 East 2nd Street

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	OTHERS PRESENT
Henke, Chair Stead Tidwell, Secretary Van De Wiele White, Vice Chair		Alberty Back Sparger Sansone	Swiney, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Thursday, October 20, 2011, at 3:57 p.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.

Ms. Back read the rules and procedures for the Board of Adjustment Public Hearing.

MINUTES

On **MOTION** of **TIDWELL**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the **Minutes** of the October 11, 2011 Board of Adjustment meeting (No. 1057).

NEW BUSINESS

21331—Kevin Hern

Action Requested:

Special Exception to modify the height of a fence in the required front yard from four feet to six feet in an RE district (Section 210.B.3). **Location:** 2411 East 34th Street South

Presentation:

No presentation was made. The applicant requested a continuance to the November 22, 2011 Board of Adjustment meeting.

Interested Parties:

None.

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”; none absent) to **CONTINUE** the request for a Special Exception to modify the height of a fence in the required front yard from 4 feet to 6 feet in an RE district (Section 210.B.3) to the Board of Adjustment meeting on November 22, 2011; for the following property:

LT 1 LESS N 100 BLK 5, OAKVIEW ESTATES, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21332—Giles Gregory

Action Requested:

Spacing Verification for a liquor store in the CBD from blood banks, plasma centers, day labor hiring centers, other liquor stores, bail bond offices and pawn shops (Section 1214.C.3). **Location:** 306 East 1st Street South

Presentation:

Giles Gregory, 1141 North Cheyenne Avenue, Tulsa, OK; no presentation was made.

Interested Parties:

Michael Sager, P. O. Box 521064 (324 East 1st Street), Tulsa, OK; stated he is the landlord of the proposed liquor store. Mr. Sager owns several properties in the area and he supports this proposal.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-1 (Henke, Stead, Tidwell, White “aye”; no “nays”; Van De Wiele “abstaining”; none absent) based upon the facts in this matter as they presently exist to **ACCEPT** the applicants request for a Spacing Verification for a liquor store in the CBD from blood banks, plasma centers, day labor hiring centers, other liquor stores, bail bond offices and pawn shops (Section 1214.C.3), subject to the action of the Board being void should another referenced conflicting use be established prior to this liquor store; for the following property:

W50 LT 6 BLK 86, TULSA-ORIGINAL TOWN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

Request for Interpretation

Action Requested:

Request for Interpretation from the Office of Development Services regarding the intent of the City of Tulsa Zoning Code (Section 1402.G) pertaining to defining “current replacement cost”, and what is the interpretation of “damaged or partially destroyed” for determining the 25%, 50%, 75%, and 100% ratio threshold.

Presentation:

Paul Enix, Senior Code Official, City of Tulsa Building Plan Review, 175 East 2nd Street, Tulsa, OK; stated his office wants to make sure they are interpreting, administering and applying the code correctly. In the code the word “structure” is used and they need to know if that could be used as a roof structure as opposed to the entire building structure.

Ms. Stead asked Mr. Enix what has the City of Tulsa been using for replacement value in administering this code. Mr. Enix is concerned that his office has been using too many templates and that is the reason for the request. Ms. Stead asked if the City of Tulsa has a licensed appraiser. Mr. Enix stated they did not have one who would be used for this purpose. Ms. Stead stated that since it is one of the most accepted in real estate circles, she is surprised that his office has not used an appraiser. Mr. Enix asked Ms. Stead if the appraiser was for an appraisal or an evaluation of replacement cost. Ms. Stead stated a licensed appraiser can give the selling appraisal and that can be extended to replacement value.

Mr. Enix stated the question the City of Tulsa is posing is not how to determine the value but exactly what the value is; is it the value strictly of the cost of replacement or the assessed value of the property? Ms. Stead stated the code stipulates that the extent of damages has to be more than 50%. Mr. Enix confirmed that that statement was understood. The question comes down to the administering of the code intent; i.e., there is a property the owner states is valued at \$20,000 and 50% is damaged; to the

City that should only be \$10,000. Ms. Stead stated the assessed value cannot be used because many properties are assessed at a lower value than a replacement value; therefore, assessed value or retail value can be used for a determination it has to be based on cost of replacement at the time of the damage. Per code, 50% would have to be of the replacement value.

Mr. Van De Wiele stated that what the City needs to compare is what it would cost to replace the structure that is damaged. The landowner would need to determine what the rebuild cost would be and how much is he putting into it, then compare those two numbers to determine the percentage.

Ms. Back stated that Mr. Enix is actually asking for a clarification for the definition on how to define structure; whether it be roof structure or building structure. The code section actually defines structure, "anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground"; it includes buildings, parking areas, walks, fences and signs.

Mr. Van De Wiele stated that when he read that portion of the code, it would have to be looked as a whole because the structure is the entire building not just a roof. Structure could also be a fence; i.e., if there was a property that had a non-conforming use on the property and the building is not being replaced but 100% of the fence is being replaced it would not make sense to lose the non-conforming use. The structure for losing the non-conforming use is the principal structure.

Mr. White stated this Board needs to break the code down to what is non-conforming and what is not non-conforming, and deal with that entity by itself as a whole. Ms. Van De Wiele concurred.

Ms. Stead stated that Section 1402.G deals only with non-conforming structures, and the first thing the City would do is determine that the structure is still non-conforming, that it has been in the past three years, etc. That brings everything down to the value of all the structure as defined by code, which includes buildings, parking areas, walks, fences and signs, calculate the replacement value, calculate the percentage and if it is over 50% then it comes to the Board of Adjustment.

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"; none absent) to **APPROVE** the Request for Interpretation from the Office of Development Services regarding the intent of the City of Tulsa Zoning Code (Section 1402.G) pertaining to defining "current replacement

cost”, and what is the interpretation of “damaged or partially destroyed” for determining the 25%, 50%, 75%, and 100% ratio threshold. For purposes of interpreting Section 1402.G the Board interprets the structure referenced in Section 1402.G as the entire structure that contains the non-conforming use that is damaged as described in that section; such that a roof is not a separate structure from the building, as an example.

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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 1:36 p.m.

Date approved: _____

Chair