

BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1059
Tuesday, November 8, 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		Back Sparger Sansone	Swiney, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Thursday, November 3, 2011, at 3:43 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 25, 2011 Board of Adjustment meeting (No. 1058).

UNFINISHED BUSINESS

21325—James Kilman

Action Requested:

This case was withdrawn.

Presentation:

No presentation was made.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

None.

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NEW BUSINESS

21333—Melissa Swenning

Action Requested:

Appeal of the determination of an Administrative Official (complaint #672933). **Location:**
2112 South Terwilliger Boulevard East (CD 9)

Presentation:

Steve Peters, Attorney, 502 West 6th Street, Tulsa, OK; stated he represents Melissa Swenning. The City of Tulsa cited Ms. Swenning for a tree house in the front yard and that decision is being appealed. The contractor that built the tree house went to INCOG and he was told there was nothing in the zoning regulations to suggest that the tree house was an inappropriate structure, using the word structure loosely, so there is no violation. The tree house was constructed to blend in with the tree and constructed to stay within the confines of the tree except for the walkway which is from the interior of the yard.

Mr. Van De Wiele asked Mr. Swiney if the Board were to grant the appeal would the Board imply that this tree house, or a tree house, could be built in every front yard in Tulsa. Mr. Swiney stated that would not be the case because the appeal applies just to the facts of today, which are specific to this case. If another applicant want to use this as a precedent in the future, he or she would have to show that his or her facts were exactly the same as today's applicant.

Ms. Stead asked Mr. Swiney for the proper terminology for the motion. Mr. Swiney stated the applicant is appealing the decision by the City of Tulsa; therefore, the Board of Adjustment will either grant this appeal, meaning the City of Tulsa staff will be overturned or the Board would deny this appeal, meaning the Board upholds the City of Tulsa staff's decision.

Interested Parties:

There were no interested parties present.

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"; none absent) to **GRANT** the appeal of the determination of an Administrative Official in Complaint #672933; for the following property:

LT 1 BK 3, TERWILLEGGER HGTS, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21334—Roy Johnsen

Action Requested:

Variance of height limitation from 35' to 44' (Section 403) and Variance of required parking from 200 spaces to 192 spaces (Section 1208.D). **Location:** East and South of the NE/c of South Lewis Avenue and 4th Place South (CD 4)

Presentation:

Roy Johnsen, 1 West 3rd Street, Suite 1010, Williams Tower One, Tulsa, OK; stated he represents the developer for what is known as the West Park Apartments. The subject property is a little over five acres and it is zoned RM-2 and proposed for multifamily use. There has been major redevelopment in the Kendall Whittier area. Directly east of the subject property is an Educare facility, Kendall Whittier Elementary School, and Tulsa University. The south portion of the subject property is going to be platted as a new lot for multifamily development. There are two matters before the Board today, parking for the subject property and height of the proposed buildings on the subject property. Today's proposal is in keeping with the neighborhood plan, the Kendall Whittier urban renewal plan, and the Kendall Whittier West Park master plan.

There is one residential single-family property adjoining the subject property; it is zoned RS-3 and within that area the developers limited the proposed buildings to two-story developments. There are seven architectural styles with subtle architectural changes in the proposed development. The two-story developments are similar to a townhouse with two levels. The three-story developments are similar to flats, and there are four-story developments. The west boundary is commercial zoning, the north boundary adjoins the single-family; the east boundary are schools and a park and the south boundary has a street separation. These circumstances support the proposed structure design and heights, especially with the development in Tulsa.

The proposed development is eight parking spaces short of meeting the 200 required parking spaces. There has been discussion with the Traffic Department concerning on-street parking and emergency access to the structures. The Traffic Department's resolution is that 5th and 4th Streets will be resurfaced and widened to provide on-street parking that will allow for 25 parking spaces.

Ms. Stead asked Mr. Johnsen to explain grasscrete designated on the conceptual plan of the project. Mr. Johnsen deferred to Mr. Doomey from the developer's office.

David Doomey, 720 Olive Street, Suite 2500, St. Louis, Missouri; stated grasscrete is a product that is substantial enough to allow rescue trucks or ladder trucks from the fire department to drive onto the merge area into the right-of-way, extend the stabilizing arms and reach the windows of all the buildings.

Ms. Stead asked Mr. Doomey if sidewalks were being planned because they are required in Tulsa. Mr. Doomey stated sidewalks are planned and drawn on the conceptual plans.

Mr. White asked Mr. Doomey if the grasscrete was going to blend into the sidewalk. Mr. Doomey stated typically where there is a grass strip between the sidewalk and the curb is where the grasscrete occurs. Grasscrete will allow grass to grow but it will support the fire department vehicles.

Interested Parties:

There were no interested parties present.

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"; none absent) to **APPROVE** the Variance of height limitation from 35 ft. to 44 ft. (Section 403) and Variance of required parking from 200 spaces to 192 spaces (Section 1208.D), referring to two conceptual plans, one on page 4.11 and plan No. AO.4 by the architects dated 11/02/2011 which was submitted today. Page 4.11 shows the conceptual heights of all buildings and page 4.12 shows the total of parking spaces and building types. The subject property will be platted and that new sidewalks shall be constructed as shown on the plans but not named as such. The Board has granted these variances because there are extraordinary or exceptional conditions or circumstances in this case. This is City of Tulsa-owned property being leased to a developer on long term circumstances. These are peculiar to the land, structure or buildings involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variances to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

TO BE PLATTED AS LOT 1, BLOCK 2, WEST PARK APARTMENTS

A TRACT OF LAND LYING IN BLOCK THREE (3), AMENDED COLLEGE VIEW ADDITION TO THE CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE RECORDED PLAT (NO. 35) THEREOF, AND PART OF THE NORTHWEST QUARTER (NW/4) OF THE SOUTHWEST QUARTER (SW/4) OF SECTION FIVE (5) TOWNSHIP NINETEEN NORTH, RANGE THIRTEEN EAST OF THE INDIAN BASE AND MERIDIAN, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE U.S. GOVERNMENT SURVEY THEREOF, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS TO-WIT:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION FIVE (5); THENCE S89°55'52"E AND ALONG THE NORTH LINE OF SAID SECTION FIVE (5) A DISTANCE OF 635.00 FEET; THENCE S00°04'08"W AND ALONG THE WEST LINE OF SOUTH ATLANTA AVENUE A DISTANCE OF 2882.10 FEET TO THE NORTHEAST CORNER OF SAID BLOCK THREE (3) THENCE S00°04'08"W AND ALONG THE EAST LINE OF BLOCK THREE (3) A DISTANCE OF 25.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING S00°04'08"W AND ALONG THE EAST LINE OF BLOCK THREE (3) FOR A DISTANCE OF 250.00 FEET TO THE BEGINNING OF A CURVE, SAID CURVE TURNING TO THE RIGHT THROUGH AN ANGLE OF 90°00'00", HAVING A RADIUS OF 25.00 FEET, WITH AN ARC DISTANCE OF 39.27 FEET AND WHOSE LONG CHORD BEARS S45°04'08"W FOR A DISTANCE OF 35.36 FEET. THENCE N89°55'52"W AND ALONG THE SOUTH LINE OF BLOCK THREE (3) FOR A DISTANCE OF 280.00 FEET; THENCE N00°04'08"E AND PARALLEL WITH THE WEST LINE OF BLOCK THREE (3) FOR A DISTANCE OF 300.00 FEET; THENCE, S89°55'52"E AND ALONG THE NORTH LINE OF BLOCK THREE (3) OR A DISTANCE OF 280.00 FEET TO THE BEGINNING OF A CURVE, SAID CURVE TURNING TO THE RIGHT THROUGH 90°00'00", HAVING A RADIUS OF 25.00 FEET, WITH AN ARC LENGTH OF 39.27 FEET, AND WHOSE LONG CHORD BEARS S44°55'52"E FOR A DISTANCE OF 35.36 FEET TO THE POINT OF BEGINNING; CONTAINING 2.09 ACRES MORE OR LESS

ALSO KNOWN AS : LOTS 1, 2, 25 THROUGH 32, AND 55 THROUGH 66, BLOCK 3, AND ALLEY IN BLOCK 3 LYING BETWEEN LOTS 1, 2, AND 25 THROUGH 32 ON THE NORTH AND LOTS 55 THROUGH 66 ON THE SOUTH, AMENDED COLLEGE VIEW ADDITION TO THE CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE RECORDED PLAT (NO. 35) THEREOF.

TO BE PLATTED AS LOT 1, BLOCK 3, WEST PARK APARTMENTS

A TRACT OF LAND LYING IN BLOCK SIX (6), AMENDED COLLEGE VIEW ADDITION TO THE CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE RECORDED PLAT (NO. 35) THEREOF, AND PART OF THE NORTHWEST QUARTER (NW/4) OF THE SOUTHWEST QUARTER (SW/4) OF SECTION FIVE (5) TOWNSHIP NINETEEN NORTH, RANGE THIRTEEN EAST OF THE INDIAN BASE AND MERIDIAN, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE U.S. GOVERNMENT SURVEY THEREOF, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS TO-WIT:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION FIVE (5); THENCE S89°55'52"E AND ALONG THE NORTH LINE OF SAID SECTION FIVE (5) A DISTANCE OF 635.00 FEET; THENCE S00°04'08"W AND ALONG THE WEST LINE OF SOUTH ATLANTA AVENUE A DISTANCE OF 3232.10 FEET NORTHEAST CORNER OF SAID BLOCK SIX (6) THENCE S00°04'08"W AND ALONG THE EAST LINE OF BLOCK SIX (6) A DISTANCE OF 25.00 FEET TO THE POINT OF BEGINNING; THENCE, CONTINUING S00°04'08"W AND ALONG THE EAST LINE OF BLOCK SIX (6) FOR A DISTANCE OF 250.00 FEET TO THE BEGINNING OF A CURVE, SAID CURVE TURNING TO THE RIGHT THROUGH AN ANGLE OF 90°00'00", HAVING A RADIUS OF 25.00 FEET, WITH AN ARC DISTANCE OF 39.27 FEET AND WHOSE LONG CHORD BEARS S 45° 04' 08" W FOR A DISTANCE OF 35.36 FEET; THENCE N89°55'52"W AND ALONG THE SOUTH LINE OF BLOCK SIX (6) FOR A DISTANCE OF 480.00 FEET; THENCE N00°04'08"E AND PARALLEL WITH THE WEST LINE OF BLOCK SIX (6) FOR A DISTANCE OF 140.00 FEET; THENCE S89°55'52"E AND PARALLEL WITH THE NORTH LINE OF BLOCK SIX (6) FOR A DISTANCE OF 50.00 FEET; THENCE N00°04'08"E AND PARALLEL WITH THE WEST LINE OF BLOCK SIX (6) FOR A DISTANCE OF 160.00 FEET; THENCE S89°55'52"E AND ALONG THE NORTH LINE OF BLOCK SIX (6) FOR A DISTANCE OF 430.00 FEET TO THE BEGINNING OF A CURVE, SAID CURVE TURNING TO THE RIGHT THROUGH 90°00'00", HAVING A RADIUS OF 25.00 FEET, WITH AN ARC LENGTH OF 39.27 FEET AND WHOSE LONG CHORD BEARS S44°55'52"E FOR A DISTANCE OF 35.36 FEET TO THE POINT OF BEGINNING. CONTAINING 3.29 ACRES MORE OR LESS

ALSO KNOWN AS: LOTS 25 THROUGH 42, AND 51 THROUGH 70, BLOCK 6, AND ALLEY IN BLOCK 6 LYING BETWEEN LOTS 25 THROUGH 42 ON THE NORTH AND LOTS 53 THROUGH 70 ON THE SOUTH, AMENDED COLLEGE VIEW ADDITION TO THE CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE RECORDED PLAT (NO. 35) THEREOF, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21335—Raul Ochoa

Action Requested:

Special Exception to permit Automobile Sales (Use Unit 17) in a CS district (Section 701); and a Variance to permit the display of vehicles offered for sale within 300 ft of an adjoining R district (Section 1217.C.2). **Location:** 9520 East 11th Street South (**CD 5**)

Presentation:

Raul Ochoa, 9520 East 11th Street South, Tulsa, OK; stated he is the owner of the subject property that he is currently leasing to another party. He purchased the property several years ago and would like to convert it to a used automobile sales lot for himself.

Ms. Stead asked Mr. Ochoa if the house on the east side of the property was being used as a home. Mr. Ochoa stated there is no one living in the house.

Interested Parties:

Corrine Bangs, 8125 East Skelly Drive, Tulsa, OK; stated she owns the trailer park property to the east of the subject property. She is concerned with a used automobile sales lot being granted there is a potential for the lot to become a salvage yard. Currently there are tires being sold from the property and they seem to be haphazardly placed around the property giving a messy appearance. She is also concerned about security lights or lot lights being installed and shining into the trailer park. Ms. Bangs also requested the Board put a time limit on the special exception if it is granted.

Ms. Stead asked Mr. Ochoa if he had plans to install lights on the property, because any outside lighting on the property must be shielded down and away from the surrounding neighbors.

Maria Ochoa, 9520 East 11th Street, Tulsa, OK; came forward to speak on behalf of her husband. Ms. Ochoa stated there are two existing pole lights on the property and at this time there are no plans to add to the lighting system.

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”; none absent) to **APPROVE** the Special Exception to permit Automobile Sales (Use Unit 17) in a CS district (Section 701); and a Variance to permit the display of vehicles offered for sale within 300 ft. of an adjoining R district (Section 1217.C.2). The Board has found that automobile sales is a permanent use in the area and that the nearest residential area is not highly impacted by this use. The subject tract is surrounded by a commercial shopping center to the north, east and west; to the south there is a screening wall in place in the RS-1 designation. The applicant has stated that all driving and parking surfaces, as shown on page 5.9, to be 63 ft. wide by 75 ft. long accommodating 75 spaces for cars are asphalt and the Board requires any expansion of this parking or driving surface area the expansion will be asphalt surface. The cottage to the south is small and the applicant states that it is not residentially occupied. The applicant has been advised that any lighting installed will be according to the zoning code. In granting this variance the Board has found that by the above stated reasons that there are 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. In granting the special exception the Board has found that 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; for the following property:

BEG 330W & 50S NEC NE TH S280 W150 N280 E150 POB LESS N25 W53 & N15 E97 FOR ST SEC 12 19 13 .90AC, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21336—Peter Janzen

Action Requested:

Variance of requirement that a bulletin board sign in an AG District be lit by constant light (Section 302.B.2.a) to allow for one message center per street frontage (one on Harvard and one on 91st St.); and Variance from the 200 ft. separation from an R District required for a digital sign (Section 1221.C.2.c). **Location:** 8925 South Harvard Avenue East (**CD 8**)

Presentation:

Peter Janzen, 205 East B Street, Jenks, OK; stated he represents the Jenks Schools. This elementary school has approximately 1,800 students and that is why the request is for two signs, because it is such a large school. Mr. Janzen has met with several of the neighbors, and the school is going to request that the sign on Harvard be allowed to move eastward back in towards the school approximately 100 feet and face it toward the street to limit any light going outward toward any residences.

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 Variance of requirement that a bulletin board sign in an AG District be lit by constant light (Section 302.B.2.a) to allow for one message center per street frontage (one on Harvard and one on 91st St.); and Variance from the 200 ft. separation from an R District required for a digital sign (Section 1221.C.2.c), subject to the plan drawing No. 083011-5 with the proposed change that the sign on South Harvard be moved approximately 100’-0” to the east and be rotated 90 degrees so it is facing east and west. The pole sign depicted in drawing No. 083011-5 is proposed sign A located at the East 91st Street south entrance, and proposed sign B is to be lowered to monument sign height and located approximately 100’-0” east of proposed sign B location depicted on drawing No. 083011-5. Proposed sign B hours of operation is to be limited to the hours of 7:00 A.M. to 10:00 P.M., seven days a week. The overall height of proposed sign B, the monument sign, will be such that it will not shine into the residences to the west of the sign. This will be further subject to the conditions and restrictions in Section 1221.C.2 as applicable with no flashing, no blinking and scrolling will be limited to horizontal movement. The Board has found that by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variances to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

W792 N/2 S/2 SW LESS W50 THEREOF SEC 16 18 13; E660 W1320 S/2 S/2 SW LESS S50 THEREOF SEC 16 18 13; E/2 E/2 SW SW LESS S50 THEREOF FOR RD SEC 16 18 13; W/2 E/2 SW SW SW LESS S50 THEREOF SEC 16 18 13; N132 W/2 SW SW SW LESS W50 SEC 16 18 13; S528 W/2 SW SW SW LESS W50 & S50 SEC 16 18 13, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21337—Lisa Riley

Action Requested:

Spacing Verification for an Adult Entertainment Establishment of 300 ft from a church, school, park (Section 1212a.C.3.b) or another Adult Entertainment Establishment (Section 1212a.C.3.c). **Location:** 1621 East 15th Street South **(CD 4)**

Presentation:

Lisa Riley, 11310 South 107th East Avenue, Bixby, OK; she presented a certified survey and surveyor's certification to establish that the proposed business is outside 300 foot parameter requirement.

Interested Parties:

Andi Bahlinger, 5818 East 77th Street, Tulsa, OK; stated that the term Adult Entertainment Establishment is very misleading and she would like to request the term be changed to something more socially accepted. She would like for the City of Tulsa recognize that Adult Entertainment Establishment is a troubling term because it has the conotation of something nasty. The request being presented to the Board today is a simple little business. It is not a bar. This is an art studio that will be serving an occasional glass of wine. Anytime the term Adult Entertainment Establishment people become upset. So, she would request the City of Tulsa change the terminology.

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) based upon the facts in this matter as they presently exist to **ACCEPT** the applicant's request for a Spacing Verification for the proposed Adult Entertainment Establishment subject to the action of the Board being void should another referenced conflicting use be established prior to this Adult Entertainment Establishment; for the following property:

LOT 1 BLOCK 1, CHERRY STREET RIDGE, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21338—Whistler Sign Company, LLC

Action Requested:

Spacing Verification of Outdoor Advertising Sign (digital and non-digital) Title 42, Chapter 12, Section 1221.F.2 and Section 1221.G.10 for relocation of existing outdoor advertising sign due south in conjunction with ODOT widening of I-44. **Location:** 17301 East Admiral Place South (**CD 6**)

Presentation:

Mike Joyce, Joyce and Snyder Law Firm, 3227 East 31st Street, Tulsa, OK; stated he represents Whistler Sign Company, LLC. The surveyor has submitted their certificate which should be in the Board's packet. The sign is being moved south approximately 23'-0" in conjunction with the ODOT widening of I-44.

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"; none absent) based upon the facts in this matter as they presently exist to **ACCEPT** the applicant's request for a Spacing Verification for the outdoor advertising sign for the conventional and digital billboards subject to the action of the Board being void should another conflicting outdoor advertising sign be constructed prior to this outdoor advertising sign; for the following property:

**LT 1 BLK 1, LUCKY'S ESTATES REPLAT MAC'S MOBILE HOMES, CITY OF TULSA,
TULSA COUNTY, STATE OF OKLAHOMA**

OTHER BUSINESS

None.

NEW BUSINESS:

None.

BOARD MEMBER COMMENTS:

None.

There being no further business, the meeting adjourned at 2:40 p.m.

Date approved: 11/22/11

Frank X. Hernandez
Chair