

**BOARD OF ADJUSTMENT**  
**MINUTES** of Meeting No. 1068  
Tuesday, April 10, 2012, 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 Back Sparger	Swiney, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Wednesday, April 4, 2012, at 2:02 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.

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Ms. Back 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"; none absent) to **APPROVE** the **Minutes** of the March 27, 2012 Board of Adjustment meeting (No. 1067).

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**NEW BUSINESS**

**21413—Roy Johnsen**

**Action Requested:**

Variance of building setback from an arterial street from 35 feet to 10 feet (Section 403 Table 3); Variance of the single-story limitation for multi-family dwellings within 50 feet of an RS district (Section 403.A.1); Variance of height limitation from 35 feet

to 40 feet (Section 403 Table 3). **LOCATION:** 1935 South Cheyenne Avenue (CD 4)

**Presentation:**

**Roy Johnsen**, One West 3<sup>rd</sup> Street, Suite 1010, Tulsa, OK; stated he represents the owner of the property and he requested a continuance of two weeks on their behalf. The owner would like to be able to meet with the neighbors before having his case heard before the Board, and because of the Easter holiday, they have been having difficulty scheduling the meeting.

**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) to **CONTINUE** the request for a Variance of building setback from an arterial street from 35 feet to 10 feet (Section 403 Table 3); Variance of the single-story limitation for multifamily dwellings within 50 feet of an RS district (Section 403.A.1); Variance of height limitation from 35 feet to 40 feet (Section 403 Table 3) to the meeting of April 24, 2012; for the following property:

**S17.5 LT 20 & ALL LT 21 & N10 LT 22 BLK 6, BUENA VISTA PARK, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

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**UNFINISHED BUSINESS**

**21405—Rob Walker**

**Action Requested:**

Variance from the requirement that lighting used for off-street parking adjacent to an R district have the light producing element be shielded from view for a person standing in an R district (Section 1303.C). **LOCATION:** 5124 South Peoria Avenue (CD 9)

**Presentation:**

**Rob Walker**, 2229 – 1<sup>st</sup> Avenue, Suite 110, Birmingham, Alabama 35233; stated he is the architect representing Virginia College. He is requesting a variance to remove custom shields on certain light poles that were required after construction.

Ms. Stead stated she had driven around the parking lot of the college and looked at all the lights. The only lights she saw that were shielded were on the west side where the apartment complex is located and in the rear of the lot nearest the houses. She asked Mr. Walker if these were the lights he was requesting the have the shields removed. Mr. Walker gave affirmation and stated that seeing the element and casting light onto the ground are two different things.

Ms. Stead stated this property has been used for several other things in the past, and asked Mr. Walker if the lights had been modified. Mr. Walker stated the lights prior to Virginia College acquiring the property had been on 40'-0" light poles with older fixtures. Those had been replaced with 30'-0" tall poles with new fixtures. Ms. Stead asked if the change had been performed at someone's insistence. Mr. Walker stated no, that the college wanted to have an evenly illuminated parking lot for the students and staff. The taller poles with the older fixtures was not the design criteria wanted. Ms. Stead stated that the Board had to be mindful of the two residential areas on two sides of the building but there has never been a complaint when the previous businesses were functioning. Ms. Stead asked Mr. Walker if he had received any complaints about the light. Mr. Walker stated that he was not aware of any complaints. Ms. Stead stated that she did not understand the problem; why there is a problem with the lights, and that she would like to hear from the City of Tulsa inspector.

Mr. Van De Wiele asked Mr. Walker if installing more light poles was not a solution. Mr. Walker stated that is a solution but that is a very expensive solution.

Ms. Stead asked Mr. Walker if installing a shorter light pole or fixture that was below the top of the fence would be a solution. Mr. Tidwell stated then the college would have the possibility of vandalism.

Mr. Walker stated that his concern was the islands of darkness in the parking lot created by the shielded lights. Mr. Van De Wiele asked Mr. Walker if the college has had safety issues. Mr. Walker stated there have been none because there is a security guard that escorts students or staff to their vehicles if they are concerned about their safety.

**Interested Parties:**

**Bob Kolibas**, Sign and Site Inspector, City of Tulsa, 175 East 2<sup>nd</sup> Street, Suite 450, Tulsa, OK.

Ms. Stead asked Mr. Kolibas if the subject lights conformed to the code, and if they did not conform to the code please explain how they do not conform. Mr. Kolibas stated that at this time the lights, with the shielding as is, do conform to the code.

Mr. Van De Wiele asked if the lights conformed after the custom shields had been installed on the lights and Mr. Kolibas confirmed that to be true. Mr. Van De Wiele then asked Mr. Kolibas if the lights, as they are purchased out of the box, were code compliant. Mr. Kolibas stated they were not because they do not come shielded.

Ms. Stead stated that it seems to be the only problem with the lights is to establish more light in the parking lot.

Mr. Van De Wiele asked Ms. Back to display Exhibit A on the screen depicting a picture of the light as purchased from the supplier. Mr. Van De Wiele then asked Mr. Kolibas if that light was considered a shielded light because of the sides coming down from the fixture top. Mr. Kolibas stated that it was considered an unshielded fixture, and what determines whether the element can be visible or not is the height of the pole and the proximity of the fence line to the R district.

**Rebuttal:**

Mr. Van De Wiele asked Mr. Walker why he was before the Board because there doesn't seem to be security issues, lights have been installed and with the shielding they meet the code. Mr. Walker stated typically Virginia College does not hire security guards. Also the staff and students have complained that they want more light in the parking lot. Mr. Walker stated there have been no complaints from neighbors.

Mr. Walker stated that he submitted his proposal for design and review with photometric plans describing what would be done with the lightbulbs, what the fixtures were, where all the light was flowing the proposal was approved. The requirement for shielding was not requested until the end of the job so the ability to integrate more light poles on the job site was lost. To have more light for the parking lot would require cutting up the parking lot to install the necessary electrical components to the additional light poles, which is very costly. For those reasons the variance is being requested for the existing lights.

Mr. Van De Wiele asked Mr. Walker how full the parking lot is in the evening. Mr. Walker stated the campus is an 800 person campus, which means there will be at least 400 people on campus at night so the parking lots are full.

Mr. White asked Mr. Walker and Mr. Kolibas if they could work together on a modification of the existing shielding. Mr. Walker stated if the shields are approved by the City then he can only assume that everything meets the zoning code.

Ms. Stead stated that what is existing now has been approved so what is really needed are additional lights for the parking lot. Mr. Walker stated that the property to the west has a covered parking structure at the fence that runs the length of the site. So there is a fence, a parking structure, and 20 feet of drive before the front doors of the facing apartments. Based on that there is no light being thrown at the apartment building. To find it necessary to provide shielded lighting on the west side of the property seems to be excessive. Mr. Walker stated he understands the sensitivity to the single family homes because they are right on the fence line, but the distance from the light pole to a front door of an apartment is probably 100 feet.

Mr. Van De Wiele stated there should be a solution between a 3'-6" shield and more lights being installed for the parking lot; surely there is something else that can be done.

Mr. Van De Wiele stated that if he can see the element then the light is shining on him. The light may not be offensively bright but it is shining on or to him.

Ms. Stead asked Mr. Walker if another continuation would be acceptable to him allowing him time to work with the inspectors for a solution. Mr. White stated that he did not think another continuance would result in a compromise because the problem is trying to keep the light off the residential area. Ms. Stead stated she is not willing to approve a request for variance that is going totally against the code but she also hates to deny the request. Mr. White stated that he wants to see the parking lot well-lit but he wants to see it done without shining light into the residential area.

Mr. Walker stated that his original request was to remove all the shields from all the lights. He asked the Board if it would be acceptable to remove the shields from the lights on the west side. Ms. Stead stated that she could not accept that proposal because the people living in the apartment complex need to be able to enjoy their balcony without the disturbance of lighting.

**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 **DENY** the request for a **Variance** from the requirement that lighting used for off-street parking adjacent to an R district have the light producing element be shielded from view for a person standing in an R district (Section 1303.C). This denial is based on the fact that the proposed unshielded lighting, according to the City Inspector's Office, is not ideal for this location; for the following property:

**Lot One (1), Block One (1), JEN-ASH PARK, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof. LESS AND EXCEPT: A strip, piece of parcel of land lying in part of Lot One (1), Block One (1), JEN-ASH PARK, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the Recorded Plat No. 4755, being more particularly described as follows, to-wit: BEGINNING at a point where the Easterly line of said Lot One (1) intersects the South line of Lot Two (2) of said Addition; thence N 77°35'33" W along said South line of Lot Two (2), also being the North line of Lot One (1) a distance of 164.35 feet; thence N 86°01'00" W a distance of 95.05 feet to the Southwest corner of said Lot Two (2), also being a point on the Westerly line of said Lot One (1); thence S 01°02'21" E along said Westerly line a distance of 73.45 feet; thence S 80°31'55" E a distance of 258.95 feet to a point on the Easterly line of said Lot One (1); thence N 01°05'52" W along said Easterly line a distance of 74.13 feet to the POINT OF BEGINNING. AND LESS AND EXCEPT: BEGINNING at a Northeast corner of said Lot One (1), also being a point on the South line of Lot Three (3) of said Addition; thence S 88°54'42" W along the North line of said Lot One (1) and the South line of said Lot Three (3) a distance of 25.62**

feet; thence S 15°07'35" E a distance of 41.23 feet to a point on the South line of said Lot One (1) and the North line of Lot Four (4) of said Addition; thence N 88°54'42" E along said South line of Lot One (1) and the North line of said Lot Four (4) a distance of 15.63 feet to point on the East line of said Lot One (1); thence N 01°05'52" W along said East line a distance of 40.00 feet to the PONT OF BEGINNING, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

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**NEW BUSINESS**

**21406—Whit Todd**

**Action Requested:**

Modification to a previously approved plan to permit an addition of early childhood and preschool education facility to the existing elementary school campus.

**LOCATION:** 13804 East 46<sup>th</sup> Place (CD 6)

**Presentation:**

**Jerece Daniels**, 2200 South Utica Place, Suite 200, Tulsa, OK; she made no presentation but was available for any questions.

**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 request for a Modification to a previously approved plan to permit an addition of early childhood and preschool education facility to the existing elementary school campus, per BOA-11943-A. This approval is per conceptual on page 3.7, finding that this modification and proposed construction are consistent with the original special exception which was granted in 2004; all for the following property:

**LT 1 BLK 1, UNION ELEMENTARY #12 ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

## **21407—J. R. Donelson**

### **Action Requested:**

Variance of the frontage requirement from 150 feet to 112.50 feet in a CS district to permit a Lot Combination (LC-391) for an optometry office (Section 703).

**LOCATION:** 1641 South Harvard Avenue, 3303 East 17<sup>th</sup> Street **(CD 4)**

### **Presentation:**

**J. R. Donelson**, 12820 South Memorial Drive, Office 100, Bixby, OK; stated the owner of the property wishes to construct an optometry office. There are various properties along Harvard that will allow this office to be a good fit for the area.

### **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 request for a Variance of the frontage requirement from 150 feet to 112.50 feet in a CS district to permit a Lot Combination (LC-391) for an optometry office (Section 703). Sidewalks are to be constructed on Harvard and on 17<sup>th</sup> Street, according to the plan, the entire extent of the property. All parking and driving surfaces must be asphalt or concrete. Any lighting should be down and away from the residential areas to the east and to the west; subject to conceptual plan on page 4.7. Finding that according to the agenda packet page 4.8 there are numerous lots in the area containing anywhere from 50 or more feet. These 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; for the following property:

**LT 9 & 10, BLK 8, SUNRISE TERRACE ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

## **21408—Lamar Central Outdoor, LLC**

### **Action Requested:**

Verification of the spacing requirement for an outdoor advertising sign of 1,200 ft from another outdoor advertising sign on the same side of the highway (Section 1221.F.2).

**LOCATION:** 5555 South 129<sup>th</sup> East Avenue **(CD 6)**

**Presentation:**

**Lorinda Elizando**, Lamar Outdoor Advertising, 7777 East 38<sup>th</sup> Street, Tulsa, OK; 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”; none absent) based on the facts in this matter as they presently exist to **ACCEPT** the applicant’s Verification of the spacing between outdoor advertising signs subject to the action of the Board being void should another outdoor advertising sign be constructed within 1,200 feet prior to this sign; for the following property:

**Lot 1, Block 1, FORD MOTOR CO TULSA GLASS PLANT, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

**21409—Lamar Central Outdoor, LLC**

**Action Requested:**

Verification of the spacing requirement for a digital outdoor advertising sign of 1,200 feet from any other digital outdoor advertising sign facing the same traveled way (Section 1221.G.10). **LOCATION:** 5555 South 129<sup>th</sup> East Avenue (**CD 6**)

**Presentation:**

**Lorinda Elizando**, Lamar Outdoor Advertising, 7777 East 38<sup>th</sup> Street, Tulsa, OK; 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”; none absent) based on the facts in this matter as they presently exist to **ACCEPT** the applicant’s Verification of the spacing between outdoor advertising signs subject to the action of the Board being void should another



outdoor advertising sign be constructed within 1,200 feet prior to this sign; for the following property:

**LOT 1, BLOCK 1, FORD MOTOR CO TULSA GLASS PLANT CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

**21410—Sheila Hellen**

**Action Requested:**

Minor Special Exception to reduce the required front yard from 35 feet to 30 feet to permit an addition to an existing residence (Section 403). **LOCATION:** 3634 South Atlanta Place **(CD 9)**

**Presentation:**

**Sheila Hellen**, 3634 South Atlanta Place, Tulsa, OK; stated this request is to provide needed bedroom and bathroom space for the family. Due to the odd shape of the lot it is difficult to construct an addition, but after careful consideration the best option is to place the addition on the north side of the house. In order to do that it will require a five foot difference taking the front yard from 35 feet to 30 feet. The addition will maintain the character of the house and the neighborhood.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

Mr. White stated this request is not unusual in this area because of the age of the subdivision and the date of the zoning code. This subdivision was dedicated in 1946 and most of the houses in that area were built prior to the mid-60s, which is before the zoning code. The building line, when it was dedicated, was 30 feet. The houses are in compliance with the 30 foot building line.

**Board Action:**

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele “aye”; no “nays”; no “abstentions”; none absent) to **APPROVE** the request for a Minor Special Exception to reduce the required front yard from 35 feet to 30 feet to permit an addition to an existing residence (Section 403); subject to conceptual plan on page 7.7. 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:

**LOT 2 LESS 92.93 X 93.47 TRI. BLK 1, OAKVIEW ESTATES, OAKVIEW FIRST RESUB L1-2 L12-14 & PRT L15 B3 OAKVIEW EST, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

## **21411—Gail Fair**

### **Action Requested:**

Variance of required 327 parking spaces to the existing 302 parking spaces (Sections 1211, 1213, 1214, 1219). **LOCATION:** 8110 South Harvard Avenue (CD 2)

### **Presentation:**

**Gail Fair**, 7060 South Yale Avenue, Suite 900, Tulsa, OK; stated her company is the property manager for the Shops of Harvard Park at 81<sup>st</sup> and Harvard. The subject property was the original Walnut Creek Shopping Center, and it is in its third life cycle. Like all shopping centers it is being re-invented with a lot of children type businesses, whether it is dance studios or karate studios. The center has recently gone through an ADA renovation on the exterior of this property to guarantee it meets the new ADA code standards. There are three existing restaurants in the center with no plans of adding any more to the center. Also, the parking lot has recently been resurfaced.

### **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 request for a Variance of required 327 parking spaces to the existing 302 parking spaces (Sections 1211, 1213, 1214, 1219). There are many diverse businesses in the center, most of which are not open at the same time. There are currently three restaurants. The Board believes that the diversity will allow for adequate parking. In granting this variance the Board has found that there are extraordinary or exceptional conditions or circumstances, particularly the diversity of use, is 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 1 LESS MOST NLY 5 THEREOF BLK 1, WALNUT CREEK III, WALNUT CREEK MALL, WALNUT CREEK MALL AMD PRT L2 B1, WALNUT CREEK OFFICE PARK, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

## **21412—Sisemore, Weisz & Associates**

### **Action Requested:**

Variance of maximum permitted land coverage in a CO zoned district from 30% to 45% (Section 803). **LOCATION:** 6611 South 101<sup>st</sup> East Avenue **(CD 7)**

### **Presentation:**

**Darren Ackerman**, Sisemore, Weisz and Associates, 6111 East 32<sup>nd</sup> Place, Tulsa, OK; stated on the subject property there are two existing buildings with one common wall making it one building. Presently there is a show room of over 100,000 square feet on the east side of the building with a 2,000 square foot warehouse on the west side of the building. This plan proposes converting a portion of the existing warehouse building into a showroom leaving the rest as a warehouse, then adding a third building adjacent to the stormwater retention pond. With this expansion it will require up to 45% lot coverage, thus the request for a variance. In the past, in this corridor district, north of this site there was a 41% lot coverage for a RV mini-storage. To the northwest the Oilers Ice Center which is an excess of 30% coverage. The unique nature is the type of building that exists with the warehouse component the proposal does cause a horizontal spread versus a vertical expansion, which would keep the lot coverage minimal. Mr. Ackerman stated that the hardship would be the unique building structure because it is not a standard retail box type structure where just the retail component would exist. The comprehensive plan does call this a retail center and with that the client does want to have shopping and employment.

### **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 request for a Variance of maximum permitted land coverage in a CO zoned district from 30% to 45% (Section 803). This is to be a one-story building over 102,000 square feet, all of it warehouse space. This will be in accordance with conceptual plan on page 9.6. The Board finds that the corridor district is established and encourages high intensity multi-functional development, which this is. The building contains both retail and warehouse space, which benefits from mutual proximity and the high capacity thoroughfares. It also complies with other portions of the comprehensive plan. In granting this variance the Board has found that by these reasons of extraordinary or exceptional conditions or circumstances, which 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 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 1 BLK 1, HOME CENTER AMD RESUB L1B1 HOME CENTER, UNION GARDENS, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

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**OTHER BUSINESS**

**Request for Interpretation:**

SECTION 1207a.  
USE UNIT 7a. TOWNHOUSE DWELLING

C. Use Conditions

1. A single-family attached townhouse dwelling shall:
  - e. Be attached by a common party wall or walls to another townhouse dwelling unit.

**Question:**

Is the word “walls” intended to be a plural of the preceding (party wall, i.e., “party walls”; or is it a distinct and separate item to identify walls that are not necessarily “party walls”?

There is a project in permitting phase that is raising this question that currently has a preliminary plat and building permit applications submitted.

**Presentation:**

**Roy Johnsen**, 1 West 3<sup>rd</sup> Street, Suite 1010, Tulsa, OK; stated he is representing Pat and Patrick Fox for this development. The ordinance that is in question was amended in 2011. The Foxes were working on the subject project before and through the amendment. They were also working with the City of Tulsa staff and it was simply overlooked in one of the provisions related to single-family dwellings in the Central Business District. Prior to the ordinance amendment in 2011, single-family dwellings could be located in the CBD by exception. Mr. Johnsen thinks the ordinance is attempting to provide a by-right use for single-family if it was within a mixed use building. Now it reads single-family use by-right, not by exception, if located within a mixed use building. It is going to be very hard to define single-family house in a mixed use building, but that is what the ordinance stipulates. Mr. Johnsen thinks the ordinance has somehow deleted the provision for special exception for single-family as opposed to by-right in a mixed use. The subject project is much more in the nature of a townhome than it is of a single-family dwelling. It is on a small lot, small in width, three-story building, has a garage underneath and the building is moved to the front of the lot. The subject project was formally a TDA property and they had to approve the plans;

even the plans stated "townhouse". In looking at the language on a townhome, it says "a single-family attached townhome dwelling shall be attached by a common party wall or walls to another townhouse dwelling unit". That is what the City is trying to define in better clarity. The idea was to permit townhomes that were attached so there would be no side yard requirements. Mr. Johnsen stated that his position is that the ordinance does not say building wall, it says "attached".

Ms. Stead stated that a party wall has a definition of its own per the book of architecture. Mr. Johnsen stated that it is very diverse when it is read the definition, and the book says a structure it did not stipulate a building wall. Ms. Stead stated that the book gave dimensions from the foundation to the ceiling, and it would appear that a common party wall would be a wall between like structures under the City's code if it is defined the townhouses are units of three or more. Mr. Johnsen stated that is exactly where the issue is.

Mr. Van De Wiele asked Mr. Johnsen if he thought the Board should read it as being attached by one or more common party walls. Is that the same thing as referred to above or is it something different? Mr. Johnsen stated that it is a little different. Most people think in terms of a building wall but the ordinance just stipulates party wall. The subject project is connected by an eight foot masonry wall and the foundation of that wall extends from the two dwellings so they are attached.

Ms. Stead stated that a party wall is not a parapet. A party wall extends from a foundation to the ceiling. Mr. Johnson stated that he read the book to say "structure". There is a situation where there is ambiguity in the code because a party wall is not defined. In the research Mr. Johnsen did he discovered there are various definitions, and one of the definitions stipulated structure and a wall is a structure. In this project the wall is a structure because it is eight foot tall and masonry with a common foundation. Thus the ambiguity in the process.

Mr. Johnsen stated that under the law, and there is good strong case law in Oklahoma, a zoning ordinance is in degradation of the constitutional property rights, and in the event of ambiguity should be interpreted and constructed to give full use to the property owner. He is before the Board today to ask them to take a practical look at the circumstances that are likely to be changed. The way the code is written it is ambiguous and under the law the interpretation should be full use of the property.

Ms. Stead stated that she agrees with Mr. Johnsen and agrees that the code needs to be changed. But the Board does not deal with fire codes and other requirements that may require walls from floor to ceiling. In this instance, she does not have a problem with calling the parapet, or whatever it is, a wall. Mr. Johnsen stated the subject is a masonry eight foot wall that the foundation extends all the way through to the end.

Mr. Van De Wiele asked Mr. Johnsen if he was asking whether the word walls in the C.1.e section of the code are common party walls, or any walls. Is that the question, whether it can be connected by a singular common party wall or any other wall? Mr.

Johnsen stated that is basically the question, but he thinks the Board has to look at the circumstances. Theoretically, there could be a townhome with a wall that went all the way to the roof and it could be six inches wide or it could extend to the entire length of the building. The idea is attachment and that it what the code stipulates, so under the law the Board could interpret the code in favor of the property owner.

Mr. Alberty stated that he was involved in the code amendment and the intent was to allow a single unit to be a part of a multi-use building. The term single-family was not interpreted to mean a detached single-family. It is a single unit. If there were two units in a multi-use building that was permitted. Why this is before the Board today is because there is a development that is called a townhouse, it is not a traditional-townhome development where they are attached by a common party wall or walls. However, they are attached. Not only are they attached by foundation but they are attached by an eight foot wall. Every one of the use conditions in Section 1207a, in his opinion, is in compliance. There was a discussion with the staff in the permitting office, when the request for the townhouse was made, and because this is not a traditional looking townhome where the units are touching, the City staff agreed that the project made sense but asked the Board to render a decision on the subject. Mr. Alberty, again, stated that it complies in all respects. The architect's request was does the project have to have attachment not only by walls but also by a common party wall, and Mr. Alberty believes it is easily interpreted as "or walls". It is does stipulate both. The Board can interpret this as a case-by-case basis.

**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) the Board has seen the Fox Architects presentation, shown as A-2 which shows eight foot solid walls between each townhouse unit. The Board believes these comply with the Tulsa Zoning Code. The language on one single-family attached townhouse dwelling shall, "e. be attached by a common party wall or walls to another townhouse dwelling unit" has been satisfied.

\* \* \* \* \*

**NEW BUSINESS**

None.

\* \* \* \* \*

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**BOARD MEMBER COMMENTS**

Ms. Stead stated that she has sent a letter to Mayor Bartlett to ask him to replace her on the Board of Adjustment. Mr. Henke stated that he is, and the other Board members are, disappointed to hear this news. Mr. Alberty stated that her service is, and has been, truly appreciated.

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There being no further business, the meeting adjourned at 2:22 p.m.

Date approved: 4/24/12

Frank X. Henke, III  
Chair