

BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1073
Tuesday, June 26, 2012, 1:00 p.m.
Tulsa City Council Chambers
One Technology Center
175 East 2nd Street

**MEMBERS
PRESENT**

Henke, Chair
Stead
Tidwell, Secretary
Van De Wiele
White, Vice Chair

MEMBERS ABSENT

STAFF PRESENT

Alberty
Back
Sparger

**OTHERS
PRESENT**

VanValkenburgh,
Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Wednesday, June 21, 2012, at 10:52 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.

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

Mr. Henke introduced Ms. Janine VanValkenburgh as the new Legal Counsel, representative for the City of Tulsa.

MINUTES

On **MOTION** of **TIDWELL**, the Board voted 4-0-1 (Henke, Stead, Tidwell, Van De Wiele, "aye"; no "nays"; White "abstaining"; none absent) to **APPROVE** the **Minutes** of the June 12, 2012 Board of Adjustment meeting (No. 1072).

NEW BUSINESS

21435—Claude Neon Federal Signs

Action Requested:

Variance of the requirement that illumination of a sign shall be by constant light to permit an EMC on an existing sign for a school in the RS-3 district (Section 402.B.4); Variance from the 200 foot separation from an R district required for a digital sign (Section 1221.C.2.c); Variance of the requirement that EMC sign shall be located within 20 feet of the driving surface of a street (Section 1221.C.2.b). **LOCATION:** 12121 East 21st Street **(CD 6)**

Presentation:

A continuance was requested due to additional relief needed by the applicant; 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) to **CONTINUE** the request for a Variance of the requirement that illumination of a sign shall be by constant light to permit an EMC on an existing sign for a school in the RS-3 district (Section 402.B.4); Variance from the 200 foot separation from an R district required for a digital sign (Section 1221.C.2.c); Variance of the requirement that EMC sign shall be located within 20 feet of the driving surface of a street (Section 1221.C.2.b) to the Board of Adjustment meeting on July 10, 2012; for the following property:

W/2 SW SE LESS S50 FOR ST SEC 8 19 14, STACEY LYNN FOURTH, SHANNON PARK 4TH ADDN - WAINRIGHT SECTION, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

UNFINISHED BUSINESS

21418—Andrew Shank

Action Requested:

Appeal the determination of an Administrative official concerning a business sign (Section 1605).

Mr. Tidwell recused himself and left the room at 1:06 p.m.

Presentation:

Andrew Shank, 2727 East 21st Street, Suite 200, Tulsa, OK; stated that on January 20, 2012 the City of Tulsa issued a business sign permit for the sign on the subject property. On April 3, 2012 the City of Tulsa issued a notice that the business sign was being used as an outdoor advertising sign, in violation of the zoning code. That is why there is an appeal before the Board of Adjustment today. Under Tulsa's zoning code the analysis for business signs is that if there is lawful use for doing business then the business is entitled to a sign. If that global understanding is simplified to an industrial district the analysis is that if the business is lawfully using the land the business is entitled to a business sign by right. The subject property has been leased by Mazzio's in its entirety and they are lawfully using the premises under Use Unit 23, storage in an IL District, is allowed by right. The City of Tulsa concedes that the property is being used lawfully. So Mazzio's is entitled to a business sign by right. Mazzio's is the lawful user so Mazzio's is entitled to the sign in question under this appeal. There is Mazzio's advertising on the subject sign, a citation was issued by the City, and that is why this case is before the Board of Adjustment today. The question before the Board today is whether there is lawful use of this property. If the answer is yes a business sign is allowed by right.

Ms. Stead stated that according to the code a business sign directs attention to the active service. A person cannot walk onto the subject property and purchase a pizza. Mr. Shank stated that a pizza cannot be purchased on the premises. Ms. Stead believes Mr. Shank is stretching the code because "it is an active service being offered on the premises" per the code. Ms. Stead stated that if Mr. Shank's client were willing to call the sign in question an outdoor advertising sign then his statement regarding the code is correct.

Mr. Shank stated that Ms. Stead's understanding is correct, it is a business sign. It is his position that it is being used as a business sign. The City of Tulsa code states "conducted on the premises". If the definition is studied, there are several items listed in the definition and has the word "or" in the sentence structure. The definition talks about a business on the premises, commodities sold on the premises, but the code does not stipulate that something must be sold on the premises. The code says if the premises are lawfully being used, here and use by right, the client is entitled to a business sign. Chapter 18 does not stipulate how tall the sign can be. It does not stipulate how far the sign must be set back or how large the display surface area can be. That is found in the hard code, the Industrial District Use Unit 21. The City acknowledges the sign is set back a proper distance from the right-of-way. The sign is a lawful height. The sign is a lawful size.

Mr. Van De Wiele asked Mr. Shank if the issue was the verbiage on the sign and how it was being used. Mr. Shank stated that the City's position is there is no business being conducted on the premises. Mr. Van De Wiele stated if the definition is looked at, and he does see the word or in the definition, it states it is directing attention to the business, commodity, service or entertainment conducted on the premises. Mr. Van De Wiele asked Mr. Shank to explain what business, commodity, service or entertainment is being conducted on the subject property based on the sign displaying 664-444 Mazzio's. Mr. Shank stated that Mazzio's has leased the entire premises. Mazzio's is using that premises for Use Unit 23 storage. That is a lawful use. That is a business under the zoning code. Mr. Van De Wiele stated that he cannot believe Mr. Shank is asking the Board to believe that the sign is to direct all drivers on the highway that Mazzio's is storing their old signs on this property. Mr. Shank stated that the sign is used to identify the business conducted on the subject property, which includes a mobile pizza kitchen, which can be reserved by a telephone call, to come to a person's home. The analysis is too finite, if it is said that something must be sold on the premises. That is not what the code says. The code says if there is business lawfully being conducted on the premises, which Mazzio's clearly is doing, Mazzio's is entitled to a sign by right. Mr. Van De Wiele agreed with Mr. Shank but stated that Mazzio's is entitled to a sign that directs attention to a business commodity, service or entertainment conducted on the subject property. Mr. Shank stated that Mazzio's is lawfully conducting business on the premises. Mr. Van De Wiele asked Mr. Shank how the subject sign directs attention to the business commodity, service or entertainment on the subject lot. Mr. Shank answered by saying that Mazzio's the user, their name is on the sign with a number to contact Mazzio's.

Ms. Stead stated that the zoning code continues to say that the outdoor advertising sign is a sign which directs attention to a business, commodity, service or entertainment sold or offered elsewhere, elsewhere, other than on the lot on which it is placed. Mr. Shank is lawfully using the property and lawfully entitled to the sign by right displaying Mazzio's name and phone number. What that definition says is Mazzio's cannot lawfully be using the subject property and use the subject business sign to advertise for Jim Glover Chevrolet because that is directing the attention somewhere else. If the analysis from the City is carried to a logical conclusion then every sign along Highway 169 would be illegal. Every business in town that has more than one location, each sign would be an outdoor advertising sign because the business is also doing something some other place. It could be extrapolated that Mazzio's has an office at 71st, 51st, and 21st. That is not the case. If there is a lawful user advertising for the lawful user on the user's premises the code says the sign is allowed by right.

Mr. Van De Wiele stated that he believes what Mr. Shank is glossing over is the directing of attention, that is the distinction. Where is the business that the sign will be directing attention toward. Mr. Shank stated the sign would be directing attention to the subject property. Mr. Van De Wiele stated that an individual cannot call the displayed number and request their belongings be stored on the property.

Mr. Shank said the Board is correct when they say a person cannot buy something on the subject property. There are numerous places in Tulsa that a person cannot purchase something on the property where the business sign is displayed, but the business is still entitled to a sign by right.

Ms. Stead stated that a person cannot buy anything from Mazzio's on the subject property, so in her opinion according to the code, the business should have an outdoor advertising sign. Mr. Stokely made it very clear to the City, when he obtained his permit, the sign was not going to be an outdoor advertising sign. In her opinion the sign is an outdoor advertising sign.

Mr. Shank stated that the Board is focusing on the fact that an individual cannot walk onto this property and purchase something. That is not the proper analysis for a business sign. Unfortunately, that is what everyone is interfaced with everyday. The signs that people drive by every day, i.e., Bank of Oklahoma, Sonic; that is the sign everybody is associated with.

Mr. Henke stated that the Bank of Oklahoma's IT center at 41st and Sheridan is not a walk-in business, there are no tellers, there are no loan officers, it is an IT center and displays Bank of Oklahoma, which is doing business on the premises. Mr. Shank stated that is the heart of the analysis and the comparison is exactly correct. If the Board thinks about Mazzio's, there is a headquarters. That headquarters is entitled to a business sign. Mazzio's has a kiosk where a person can purchase a pizza on the way home. That business is entitled to a business sign. Mazzio's has this property where they have a need for lawful use and are using it. Mazzio's is entitled to a business sign.

Ms. Stead stated that she agrees with Mr. Shank, but Mr. Stokely told the City in writing, and it is in three different sections of the Board's agenda packet, that the sign would not be an outdoor advertising sign. In Ms. Stead's opinion that is exactly what Mr. Stokely has created. Mr. Shank respectively disagrees with Ms. Stead because the entire premise has been leased to Mazzio's. Mr. Stokely, Stokely, Ltd. the land owner, does not have a right to use that property unless Mazzio's breaches the lease, or something similar. Mr. Stokely has been truthful by stating that he will format a business sign on this property, and that is what he has done.

Mr. Van De Wiele asked Mr. Shank if he knew why Mr. Stokely clearly states in the letter that he would not attach the Stokely name to the sign, and why the Stokely name is on the sign. Mr. Shank stated that he has the understanding that the City asked Mr. Stokely to state this in the letter, and this can be confirmed with Mr. Kolibas at the City. It is also Mr. Shank understands that Mr. Stokely could not advertise "Stokely Outdoor". If there is concern in regards to the nameplate, there is a provision in the zoning code that allows a label to be affixed to a commodity.

Mr. Stead stated that this appeal would not be before the Board today if the sign read Stokely Storage, because it is a storage building. Mr. Shank disagreed with Ms. Stead because Stokely is not using the building for storage. Mr. Stokely has leased all the

rights to this land to Mazzio's, so Mr. Stokely cannot do anything on the property. Mazzio's is using this property lawfully for storage so they are entitled to a sign by right.

Mr. Van De Wiele asked Mr. Shank if Mazzio's had been identified as the tenant during the permitting process. Mr. Shank stated that at some point the issue came up, but the lease was under negotiations. The lease had not been signed and the Mazzio's name came up along with several other names. Mr. Stokely was attempting to have everything in order for the new tenant, receive approval from the City, then the permit was issued, and when the sign was erected that is when the notice was issued by the City. Mr. Van De Wiele stated that after he had read the information provided in the Board's packet it was a way of obtaining an outdoor advertising sign. If Mazzio's had been identified as the tenant from day one and the City approved a sign, Mr. Van De Wiele is not sure what type of sign was intended for the subject property. But in Mr. Van De Wiele's opinion, when he drives by the sign, it says please call 6644-4444 for a pizza. What Mr. Van De Wiele is focusing on is the directing of attention. That sign, in Mr. Van De Wiele's opinion, is directing his attention to services that are offered elsewhere.

Mr. Henke introduced Mayor Dewey Bartlett, who had stepped into the meeting. Mayor Bartlett came forward.

Mayor Dewey Bartlett offered his profound thank you to Ms. Clayda Stead. Ms. Stead told Mayor Bartlett that she is sorry she has to retire from the Board of Adjustment. Mayor Bartlett said he is sorry also, because she has become a commendable example of why people should firmly believe in public service. The Board of Adjustment really does serve a purpose because it is above the political fray. That each of the board members are able to devote a considerable amount of your time, without pay obviously, to make decisions on behalf of the entire city and always taking the perspective of what is good for the whole not just someone's desire is commendable. Ms. Stead, you have become a great example of a public servant. Not just here on the Board of Adjustment, which is a difficult appointment, but also on the Sales Tax Overview Committee where they first met. Both positions have been performed with the same commitment, very good judgment, and an excellent attitude.

Ms. Stead stated that she has a very good partner, Chuck, her husband that has backed her in everything that she has done and do. That has allowed her to not hold an outside job. She had an advantage when she was on the Sales Tax Committee because she could devote her time to it and make sure the information was correct. She has tried to do the same thing while on the Board of Adjustment. Ms. Stead complimented everyone on the Board of Adjustment because there is never an ounce of politics from the members of the Board. Ms. Stead told Mayor Bartlett that she likes him

and has always backed him, and she is glad he is the Mayor of Tulsa. She looks forward to helping him again.

Mayor Bartlett announced that there is a prospective member, Ms. Tory Snyder, to be confirmed for Ms. Stead's open seat on the Board of Adjustment. Mayor Bartlett thanked Ms. Stead again for her public service and wished her well.

Bob Kolibas, City of Tulsa, Sign and Site Section, 175 East 2nd Street, Tulsa, OK; stated the Sign and Site Department has brought this case before the Board for clarification because the department needs a definition between a business sign and an outdoor advertising structure. Typically a business sign makes reference to the activities conducted on the premises, and an outdoor advertising sign is generally reserved for business conducted off the premises. In this instance, the City is not certain whether that sign actually made reference to business being conducted on the premises. Again, the City needs clarification for future permits allowing the department to make a determination on whether this type of signage is permitted.

Mr. Van De Wiele asked Mr. Kolibas what was contemplated being on the subject sign and how the sign would be utilized during the permitting process. Mr. Kolibas stated that during sign review process signs are issued from the zoning code based on the amount of frontage of a piece of property. It is common for sign permits to come in for businesses that are projected for a site. Again, the sign size and height is determined in the zoning code. The building aspect of it is reserved for the building permit and they normally coincide. Sometimes sign permits may be issued prematurely for a business opening to be prepared for the opening.

Ms. Stead asked Mr. Kolibas if his department automatically granted a 50'-0" height for a business sign. Mr. Kolibas stated that in the code, if the business abuts a freeway, there is a provision that does allow that to happen. Ms. Stead asked if it has to be an outdoor advertising sign or can it be a business sign? Mr. Kolibas stated that it can be a business sign as long as it is accompanied by the engineering data.

Mr. Van De Wiele stated in the past there was a hotel on 21st Street that came before the Board of Adjustment with a sign request, because they did not have room for a ground sign. The hotel had negotiated a lease with a property owner across the street and that was not allowed because it was not conducting the business that was offered on the sign location. Mr. Alberty stated that in that case the applicant had applied for a variance. The variance was considered by legal staff to be a use variance, which the Board does not have a right to grant. Mr. Van De Wiele asked Mr. Alberty how that case is different than today's request consideration. Mr. Henke brought into consideration the old Amoco where core samples had been stored, that had been located at 41st and Yale, which is now the Schusterman-OU Center. When the corner business was Amoco a person could not go into the business to purchase gasoline because it was not a gas station yet the sign said Amoco. There are a lot of aspects to

a business. A business needs storage, they need IT functions, and they need to advertise their business. Mr. Henke stated that Mr. Shank's point is that Mazzio's has exclusive right under their lease to the property. Mr. Henke offered the City to give some insight to the situation.

Mr. Kolibas stated that if a company needed storage there would be a lease for them to store items, and that is what the City is asking. Does the sign in question reference, or must it reference, the business that is being conducted on the premises. Mr. Henke stated there are law firms in downtown Tulsa that advertise the law firm's name on the outside of the building, and the firm is only storing books and old files on the property. None of the attorneys from the firm are going to the building to conduct business so is that an advertising sign? Mr. Henke stated that he is not trying to be argumentative but he is trying to think through this dilemma.

Mr. Van De Wiele asked Mr. Kolibas if the process the City went through to come up with the notice, is it more a business sign or more an outdoor advertising sign. Mr. Kolibas stated the department believed it was a business sign in the permitting process.

Ms. Stead stated that she agrees with the City. The sign should only make reference to the service being offered on the premises which is storage. Mr. Henke stated that goes back to the law firms in downtown where case files and law books are being stored, and no public is entering because it is a restricted area. Ms. Stead stated those signs must not have needed a permit, and they apparently did not come before the Board of Adjustment.

Mr. White asked Mr. Shank if people could work in the building being leased by Mazzio's, or is it structured so that there cannot be any employees on the site. Would it make a difference if people were or were not on the site? Mazzio's has leased the building and they have a right to erect the sign. Mr. Van De Wiele stated that Mazzio's has the right to erect a sign. That is the distinction. What sign does Mazzio's have the right to erect? Mr. Henke stated that Mazzio's has the right to a business sign that says Mazzio's because that who is on the lease. Mr. Henke stated that QuikTrip has a storage facility with their logo. Mr. Van De Wiele stated that the subject sign looks like a billboard and it is directing his attention elsewhere like a billboard. Mr. Henke stated that the facility does not need to be a restaurant. The name Mazzio's is a brand name. When a person sees the BOK IT Center what do they think? A person sees BOK they think bank, they don't think IT center. It is a branding with the logo, they own it, it is their property and they want to convey to the public that it is their bank. They are entitled to that right under the law. Mr. Van De Wiele stated that a person may think that, but there is nothing on the BOK sign directing a person's attention elsewhere. There is something on the subject sign directing a person's attention elsewhere, because a person is calling the phone number and reaching a restaurant.

Mr. Shank stated that Mr. Van De Wiele has stated numerous times that the sign looks like, the sign feels like; whether or not the sign looks like a billboard does not determine whether it is a lawful business sign. The analysis is lawful use of the land. That user is

entitled to a sign by right. By right distinguishes Mazzio's from the hotel case referred to earlier, because they were not doing anything on that property. The hotel was attempting to be granted a variance asking for extraordinary relief. This case is talking about "by right". Mazzio's is lawfully using this land. They are entitled to a sign that advertises for Mazzio's as the user. Business is much broader than retail sales. It is all the use units covered under the code. The reason the law firms downtown have signs is because there is lawful use of that land and there is a sign by right. The City has stopped this permit and that is why this case is before the Board of Adjustment.

Chad Smith, Sign Plans Review, City of Tulsa, 175 East 2nd Street, Tulsa, OK; stated he would like to give the Board some insight on how this application was received. The permit application was originally applied for by Acura Sign Company, not Stokely Sign Company, as a business sign. The sign came in with the Stokely identifier badge on it. In addition to that, the LED portion of the sign also addressed Stokely's name with Stokely's Event Center and Stokely's Outdoor Advertising Company existing as a business to the north and to the west of the subject location. That throws it into an off premise sign and that is what prompted the original Letter of Deficiency. During that time Mr. Shank was working with an occupant of the premises. Again, what came in originally had Stokely's name on the plan. What was required of Stokely was to re-submit a new plan indicating that the Stokely name had been removed. At that point it was up to Mr. Stokely whether the subject sign was to be used as a business sign or an outdoor advertising sign. In Mr. Smith's personal opinion, with the Stokely name on the sign it does direct a person's attention to Stokely's business, and would be considered an outdoor advertising sign.

Ms. Stead asked Mr. Smith if that, after that point, was Mazzio's brought into the scenario? Mr. Smith stated that the resubmitted plans came in with "Living on Tulsa Time" as the message on the display unit. That is what prompted the verbiage in the issued permit stating they needed to comply with the definition of a business sign. With the LED being changeable, of course, the message can change. Ms. Stead asked if anyone in the Sign Plans Review Department went to view the sign as Mazzio's displaying the telephone number today would the City want to cancel the determination. Mr. Smith asked Ms. Stead if she meant to cancel the determination that it is a business sign. Ms. Stead stated that it is not a proper business sign, that it should advertise storage, would Mr. Smith's department want to back off that? Mr. Smith stated that the general consensus is that the use of the sign currently is an off premise sign.

Rebuttal:

Mr. Shank thanked Mr. Smith for clarifying the Stokely issue. That it was the face of the sign in the original application displaying Stokely. The City is firm in their position of the citation that was received in regards to the Mazzio's sign. He has continued to work with the City for amicable solution but they were firm, and that is why this is before the Board of Adjustment today.

Ms. Janine VanValkenburgh asked Mr. Henke if the decision in this case would be establishing a precedent. She knows the Board takes each case individually but there have been occasions where the Board relies on past decisions for guidance.

Interested Parties:

There were no interested parties present.

Comments and Questions:

Ms. Stead stated that the Sign Board needs to do some more work. There are several other areas that the Board of Adjustment has mentioned and this is one that truly needs a clearer definition.

Mr. Van De Wiele stated the business conducted on the subject property is lawful. As best as the Board can determine the sign is the proper size with the right setback and the correct location. But what he keeps coming back to is what business his attention is being directed toward by this sign. The sign is not the pole, the backboard, and the frame it's the content of the sign.

Board Action:

On **MOTION** of **STEAD**, the Board voted 2-2-1 (Stead, Van De Wiele "aye"; Henke, White "nay"; Tidwell "abstaining"; none absent) to **DENY** the Appeal and uphold the determination of an Administrative Official concerning a business sign (Section 1605); for the following property:

LTS 1 THRU 12 & S30 VAC 47 ST ADJ ON N N7.5 VAC ALLEY ADJ ON S & W25 VAC 104 EAST AVE ADJ ON E BLK18, ALSUMA, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

Mr. Tidwell re-entered the meeting at 1:57 p.m.

NEW BUSINESS

21436—Joseph B. Gilbert

Action Requested:

Variance of the allowed building coverage for a detached accessory building in the RS-3 District from 30% to 70%; Variance of the maximum permitted height for a detached accessory building from 18 feet to 20 feet in the RS-3 Zone (Section 210.B.5.a.). **LOCATION:** 1505 South Owasso Avenue **(CD 4)**

Presentation:

Joseph B. Gilbert, 1505 South Owasso Avenue, Tulsa, OK; stated he would like to build a garage for his home. When the neighborhood was established the current zoning code was not in effect and complying with the current zoning code presents a hardship for the particular lot. The lot is only 40'-0" wide which would confine him to a 240 square foot garage which is not feasible. This property had a similar garage and most of the neighboring properties have a garage of similar size.

Ms. Stead stated that this property has a historic preservation overlay, and she asked Mr. Gilbert what he was doing with the Historical Preservation Society. Mr. Gilbert stated that he was in contact with the Historical Preservation Society. His current understanding is that since the garage is to be in the rear yard that there will not be an issue. Ms. Stead stated that she is not sure whether the Board of Adjustment should approve this request without the sanction of the Historical Preservation Society. Ms. Stead asked Mr. Alberty for his advice.

Mr. Alberty stated that he was not sure what would be required in regards to the Historical Preservation Society. The subject property is definitely in the HP District and Mr. Gilbert would be subject to whatever their design standards are. Regardless of what the Board of Adjustment does the garage would still be subject to the Historical Preservation Society's approval. Mr. Gilbert may need approval from both the Historical Preservation Society and the Board of Adjustment.

Mr. Gilbert stated that the garage will have the same siding as the house, the same basic kind of roof as the house, it will be the same color as the house, and will be designed in the Craftsman style.

Mr. Henke asked Mr. Gilbert if he would be using the existing concrete pad from the old garage. Mr. Gilbert stated that he would not be able to use the existing concrete pad because it is on a setback, and he will need to bring the new pad approximately four feet off the rear and three feet from the side. Also, there is a shared driveway making it impossible to set the garage closer to the house.

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 a Variance of the allowed building coverage for a detached accessory building in the RS-3 District from 30% to 70%; Variance of the maximum permitted height for a detached accessory building from 18 feet to 20 feet in the RS-3 Zone (Section 210.B.5.a.), subject to conceptual site plan on pages 4.9 and 4.10 with a width and

depth of no more than 28'-0" by 20'-0" and no more than a 20'-0" height maximum. The accessory building is not to be used for an additional dwelling unit and will not contain the amenities for such use. In granting the variances the Board has found by reason of extraordinary or exceptional conditions or circumstances, being the size 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 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:

N10 LT 12 & ALL LT 13 & S5 LT 14 & W10 VAC ALLEY ADJ ON E THEREOF BLK 1, MORNINGSIDE ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21437—Ernest Ehimika

Action Requested:

Special Exception to permit a Community/Event Center (Use Unit 5) in an IL District (Section 901). **LOCATION:** 825 North Sheridan Avenue **(CD 3)**

Presentation:

Michael Bethel, 14217 East 38th Street, Tulsa, OK; stated he is representing Mr. Ernest Ehimika because he is unable to attend today's meeting due to a death in the family. He will be happy to answer any questions the Board may have at this time.

Ms. Stead asked how long Mr. Ehimika has owned or leased the subject property. Mr. Bethel stated that he was not sure, but has just recently purchased or leased the property.

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 Special Exception to permit a Community/Event Center (Use Unit 5) in an IL District (Section 901). The Board makes this approval subject to previous conditions set by the Board of Adjustment. The previous conditions are closing at 2:00 A.M. on Friday and Saturday, closing at 12:00 midnight all other nights, provide adequate security for all events, trash pick up at all events, a fence was required in the April 8, 2008 Board decision and it has been constructed, it is required that the fences be maintained in

good condition, and any music heard outside of the building is to be kept acceptable decible levels per City Ordinances. The Board makes this approval for a period of five years from today's date of June 26, 2012. The Board of Adjustment finds there have been no complaints in the last two years, but the ownership has changed frequently and that is the reason for the limitation. 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:

**LTS 3 & 4 LESS W 5' TO CITY, NORTHEAST CENTER ADDN RESUB L5-8
POLSTON SECOND SUB, POLSTON SECOND SUB, VAL-CHARLES ADDN,
WALTER SQUARE ADDN RESUB L1-24 NORTHEAST CENTER ADDN, CITY OF
TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

21438—Hayden Ryan

Action Requested:

Variance of Rear Yard Setback from 25 feet to 10 feet in the RS-2 zone (Section 403.A, Table 3). **LOCATION:** 2833 South Gary Avenue **(CD 4)**

Presentation:

Hayden Ryan, 2833 South Gary Avenue, Tulsa, OK; stated he purchased the home in 2006 while single, and now he is married with a family. He would like to add onto the property. The house is directly across from a pond and the lot is curved to accommodate the pond. The property behind the house is a church.

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 **APPROVE** the request for a Variance of Rear Yard Setback from 25 feet to 10 feet in the RS-2 zone (Section 403.A, Table 3). The Board has found the hardship to be that this lot is of an unusual shape and shallow depth, combining the two where there is very little backyard. In order to have any additional expansion of the dwelling the only way is to go into the required rear yard which is what the request is for. The Board makes this approval per conceptual plan on page 6.7. 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:

LT 8 BLK 5, FELLOWSHIP CONGREGATIONAL CHURCH, LAKEWOOD ADDN AMD, MEADOW LANE ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21439—Martha Thomas

Action Requested:

Special Exception to permit a manufactured home (Use Unit 9) in an RS-3 district (Section 401); Special Exception to extend the time limitation from 1 year to permanent (Section 404.E.1). **LOCATION:** SW/c East 29th Street North and North Atlanta Avenue (CD 1)

Presentation:

Martha Thomas, 4258 Sunglo Parkway, Sand Springs, OK; stated her intentions are to set a three-bedroom, two-bath manufactured home on the property for herself and her son. She has just recently acquired the property next door to the subject property.

Ms. Stead stated that she wished she could vote to approve this request, however, on 30th Street she counted twelve new homes. That indicates the neighborhood is trying to rejuvenate and improve. She personally never likes to place a manufactured home among stick-built homes. She realizes that some of the homes in the neighborhood should be abandoned and destroyed, but when she sees a dozen new homes she cannot vote for a manufactured home to be placed in the neighborhood.

Mr. White asked Ms. Thomas if the manufactured home was a new or used model. Ms. Thomas stated the home was a 1997 model, and has lived in it for the past seven years. Routine maintenance has been performed on the home through the years.

Ms. Thomas told the Board that she is requesting approval of the special exceptions because she and her son are both disabled. There is no public transportation in the area of Sand Springs they are living in, and that creates a hardship for both of them.

Interested Parties:

Charles Langster, 2505 East 29th Street North, Tulsa, OK; stated he lives diagonally across from the subject property and his home is approximately 50 years old. He has spoke with his mother and several neighborhood residents, and nobody objects to the manufactured home being placed on the subject property. The only objection by the majority was the request for the term to be permanent instead of one year. The majority would be agreeable to a five year term with the special exception being revisited at the end of that time, because the neighborhood is changing. The house on the corner of East 28th Street North and North Atlanta is a modular home, which was placed on the property in the early 1960s.

Mr. Henke stated the Board had received a letter from Jane Malone, President of the Chamberlain Neighborhood Association.

Rebuttal:

Ms. Thomas stated that the manufactured home has been twice in seven years and has been well kept.

Ms. Stead asked Ms. Thomas if she owned the lot where the manufactured home is proposed to be placed. Ms. Thomas stated that she just recently acquired the property immediately next to it. Her Godmother owns the subject property so in the future it will be hers. Ms. Thomas believes the manufactured would become an asset to the neighborhood because the houses closest to the subject property appear to be abandoned, are in very poor condition and an eyesore. If her request is approved it will create a hardship for her, but this is something she has worked for. If she is allowed to place the manufactured home on the subject property she and her son will have access public transportation relieving one of her worries.

Comments and Questions:

None.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 4-1-0 (Henke, Tidwell, Van De Wiele, White “aye”; Stead “nay”; no “abstentions”; none absent) to **APPROVE** the request for a Special Exception to permit a manufactured home (Use Unit 9) in an RS-3 district (Section 401); Special Exception to extend the time limitation from 1 year to 5 years from today’s date (Section 404.E.1), finding that 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. This approval is subject to the site plan on page 7.6 with a time limit of 5 years from today’s date of June 26, 2012; for the following property:

LT 1 BLK 4, THE BEN C FRANKLIN ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21440—Shaw Homes, Inc.

Action Requested:

Variance to increase maximum surface area of all-weather material from 34% to 36% in the RS-3 district (Section 1303.D). **LOCATION:** 4102 South 181st East Avenue (**CD 6**)

Presentation:

Glen Shaw, 1420 West Kenosha Street, Broken Arrow, OK; stated this is a large cul-de-sac lot with a narrow front, and the covenant require two parking spaces on the

outside. The zoning code only allows for 34% front coverage, and to be able to have a two-car driveway to the street an additional 2% is needed. This 36% coverage would allow for a normal driveway to the street.

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 to increase maximum surface area of all-weather material from 34% to 36% in the RS-3 district (Section 1303.D). The Board finds that the very unusual, triangular lot contains over 15,000 square feet has requirements which prohibit ordinary building practices according to the current zoning code. The Board makes this approval per conceptual plan on page 8.6. In granting this variance 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 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 12 BLK 1, OAK RIDGE PARK, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21441—Paul Crosby

Action Requested:

Variance of the front yard setback from 25 feet to 22.7 feet in the RS-3 district; Variance of the side yard (west) setback from 5 feet to 4.9 feet in the RS-3 district (Section 403.A, Table 3). **LOCATION:** 421 West 77th Street South **(CD 2)**

Presentation:

Michael Miller, 655 West 79th Street, Tulsa, OK; no presentation was made.

Mr. White left the meeting at 2:41 p.m.

Interested Parties:

There were no interested parties present.

Mr. White re-entered the meeting at 2:43 p.m.

Comments and Questions:

None.

Board Action:

On **MOTION** of **STEAD**, the Board voted 4-0-1 (Henke, Stead, Tidwell, Van De Wiele, “aye”; no “nays”; White “abstaining”; none absent) to **APPROVE** the request for a Variance of the front yard setback from 25 feet to 22.7 feet in the RS-3 district; Variance of the side yard (west) setback from 5 feet to 4.9 feet in the RS-3 district (Section 403.A, Table 3). Mistakes in the setback were found recently when the survey was made of the property. The Board makes this approval subject to conceptual plan on page 9.11. No new encroachment is permitted by this approval. In granting the variance 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:

LT 13 BLK 4, STONEBROOKE PARK, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21442—John Moody

Action Requested:

Variance to allow a changeable copy (EMC) sign within 102 feet of an R District (Section 1221.C.2.c). **LOCATION:** 1902 South Harvard Avenue **(CD 4)**

Presentation:

John Moody, 6004 South Marion Avenue, Tulsa, OK; stated this property is a small strip shopping center that originally had three ground pole signs on that have been removed. His client proposes to install one digital copy sign. The zoning code requires a 200 foot setback from any R district, which this property abuts. This lot is narrow and that is what prompted the variance request. This lot is not wide enough to accommodate the setback from Harvard Avenue nor from the R district because of the lot being narrow.

Ms. Stead stated to Mr. Moody that all she sees in her agenda packet information is that the Board is requested to approve a variance to allow a copy not to encroach to close to the centerline of Harvard. Mr. Moody stated the request is a variance of the setback to allow changeable copy within 102 feet from the R district to the west. Ms. Stead stated that she understood Mr. Moody to say that he could not comply with setback from the centerline on Harvard. Mr. Moody stated that he was expressing the hardship. The lot is so narrow that it cannot meet every thing. The lot is setback and it does comply with all setback requirements from the centerline of Harvard as well as everything else. It is just that the narrowness of the lot prevents the other requirements being met.

Mr. Moody stated that the sign, because of other structures in the area, is not visible from most of the lots due to the change in the elevation and the existing buildings in the area. The sign is not as visible as it would be under normal circumstances. The sign will be placed on the south end of the building.

Mr. Van De Wiele asked Mr. Moody if the sign was going to be installed on top of the grey cinderblock building. Mr. Moody stated that it is not a roof sign, though it will be above the building.

Ms. Stead stated that if today's request is approved by the Board, she would hope that all the other signage in front of the store would be removed. Mr. Moody stated there is a tenant in the store and he will advise his client to do so. Mr. Van De Wiele questioned whether all the writing on the store front windows was signage and if it complied with code. Mr. Moody stated that his client will agree with whatever the city code requires, and if the signs do not comply they will be removed.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 3-2-0 (Stead, Tidwell, White "aye"; Henke, Van De Wiele "nay"; no "abstentions"; none absent) to **APPROVE** the request for a Variance to allow a changeable copy (EMC) sign within 102 feet of an R District (Section 1221.C.2.c). The hardship is that in order to have the sign at the proper setback from Harvard, combine with the shallowness of this CS zoned lot the sign would be stated distance from the R district to the west. The sign in question will be per plan on page 10.18. As for size and location it is to be per page 10.16 and page 10.17. There will be no animation, no flashing, no rolling, scrolling will be right to left only and the sign will be in accordance with Section 1221.C.2. The sign is to face North and South. All other wall signs, that are currently on the store fronts, will be in compliance or come into compliance with the City code. 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 9 THRU 12 LESS E10 THEREOF FOR ST BLK 1, FLORENCE PARK ADDN,
CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

21443—Andrew Shank

Action Requested:

Variance to allow more than one sign in an OM district (Section 602.B.4.b); Variance to exceed total square feet of display surface area from approximately 100 square feet to 880 square feet (Section 602.B.4.c); Variance of maximum sign height in the OM district from 20 feet to 30 feet (Section 602.B.4.e). **LOCATION:** 2440 East 81st Street, 8101 South Lewis Avenue, 8100 South Lewis Avenue **(CD 2)**

Mr. Tidwell left the meeting at 2:59 p.m.

Presentation:

Andrew Shank, 2727 East 21st Street, Suite #200, Tulsa, OK; Mr. Shank requested the Board refer to page 11.11 in their agenda packet. The drawing ST4 is the north face of the building, and this is the drawing that staff appropriately raised an issue with because there was a smaller sign called out on it. This Oklahoma surgical hospital did not have the square footage spelled out. The smaller portion will be removed and the language, "Oklahoma Surgical Hospital", is about 206 square feet. The relief requested does not need to change. The drawing ST2 is the west elevation and it is essentially three signs. This totals 417 square feet, conservatively, and will display "The Premier Family Center".

Mr. Tidwell re-entered the meeting at 3:02 p.m.

Mr. Shank continued to say, as more doctors are brought into the center their names will be added to the display. The drawing ST1.0 is the northeast elevation displayed on page 11.11, which shows 65 square foot display surface area. These drawings bring clarity to the wall signs. The 30 foot ground sign in the front of the building is 192

square feet. In the aggregate, that totals 880 square feet so the relief does not need to change. Mr. Shank just wanted to clarify that the north face sign will be changed.

Ms. Stead asked Mr. Shank to verify that there was one entrance sign, six wall signs, and one directional sign that are all non-digital. Mr. Shank answered affirmatively.

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 to allow more than one sign in an OM district (Section 602.B.4.b); Variance to exceed total square feet of display surface area from approximately 100 square feet to 880 square feet (Section 602.B.4.c); Variance of maximum sign height in the OM district from 20 feet to 30 feet (Section 602.B.4.e). This large medical facility having many facets needs directional and other signage. The Board approves one entrance sign, six wall signs, and one directional sign totaling 880 square feet. All signs are to be non-digital, but will be lighted according to code. The conceptual placement of these signs is shown on page 11.11. These signs may improve visibility for the medical facility that has poor accessibility and identification from the nearby East 81st Street. In granting these variances the Board has found 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:

PRT LT 1 BEG NWC TH S1008.29 E546.16 TH ON CRV LF 704.16 TH ON CRV LF 33.26 W41.82 N254.33 E50.01 TH ON CRV LF 31.77 TH ON CRV LF 128.44 TH ON CRV RT 171.12 N21.30 TH ON CRV LF 9.22 W939.9 POB LESS BEG NWC LT 1 TH E431.84 S1008.79 W431.84 N1008.65 POB BL, PRT LT 1 BEG NWC TH E431.84 S1008.79W431.84N1008.65POB, BLK1, PRTL1BEG939.90ENWCTHE558.08S30.29C RVRT171.12CRVLF128.44CRVLF31.77E50.01S254.33W41.82CRVLF33.26CRVLF704.16E656.38S598.22W1701.03N64.5W58S64.5W779.12CRVRT.10N602.32E546.16C RVLF704.16CRVLF33.26W41.82N254.33E50.01CRVLF31.77CRVLF128.44CRVRT171.12N21.30, ORAL ROBERTS UNIVERSITY HGTS 2ND ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

OTHER BUSINESS

Election of Officers for 2012-2013 Board of Adjustment year.

On **MOTION** of **HENKE**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to nominate and elect Mr. Mike Tidwell as Secretary of the Board of Adjustment.

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 nominate and elect Mr. David White as Vice-Chair of the Board of Adjustment.

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 nominate and elect Mr. Frazier Henke as Chair of the Board of Adjustment.

NEW BUSINESS

None.

BOARD MEMBER COMMENTS

None.

There being no further business, the meeting adjourned at 3:11 p.m.

Date approved: 7/10/12


Chair