

BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1080
Tuesday, October 9, 2012, 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 Snyder Tidwell, Secretary Van De Wiele White, Vice Chair		Miller Back Sparger	Swiney, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Thursday, October 4, 2012, at 9:41 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.

MINUTES

On **MOTION** of **TIDWELL**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; none "abstaining"; none absent) to **APPROVE** the **Minutes** of the September 25, 2012 Board of Adjustment meeting (No. 1079).

UNFINISHED BUSINESS

21474—Jose Prado

Action Requested:

Special Exception to allow a CNG auto conversion shop and auto sales (Use Unit 17) in a CS Zone (Section 701, Table 1). **LOCATION:** 10877 East Admiral Place (CD 3)

Presentation:

Jose Prado, 10877 East Admiral Place, Tulsa, OK; no presentation was made but Mr. Prado was available for questions.

Mr. White asked Mr. Prado if he was going to perform the task of refueling the autos brought to him. Mr. Prado stated that he would not be refueling, only performing conversions of the autos.

Mr. Henke asked Mr. Prado if there would be autos stored outside, whether they be autos to be worked on or autos for sale. Mr. Prado stated the autos on the property would be autos receiving conversion kits and would be inside the shop. Mr. Henke asked Mr. Prado if he was going to have any outside storage. Mr. Prado stated that everything would be stored inside the shop.

Mr. Van De Wiele asked Mr. Prado if he was also going to have auto sales on the property. Mr. Prado stated that he would have auto sales on the property and those cars would be outside. Mr. Van De Wiele stated there is a picture in the Board's agenda packet showing a vehicle that is for sale parked in the grass on the subject property, and that is not allowed because all parking and driving surfaces must be concrete or asphalt. Mr. Prado stated that he would correct that situation.

Mr. Tidwell asked Mr. Prado how many vehicles he anticipated to have in his shop receiving the CNG conversion kits and how many vehicles would be for sale on the subject property at any one time. Mr. Prado stated there would probably be two or three cars in the shop having the CNG conversion kits installed.

Ms. Back stated that she spoke with a City of Tulsa staff and was able to pull the Zoning Clearance Permit application that Mr. Prado submitted. He had just listed that he was going to have an auto service shop and storage for the shop for the vehicle field conversions on the subject property. There was no mention of outside storage, therefore, there was nothing mentioned about the subject property being within 300 feet of the R District or requesting a variance for outside storage of merchandise and goods. Ms. Back informed the Board that they could grant the special exception for the auto conversion shop and to allow the sales, if they were so inclined. However, nothing could be stored or displayed outside until a variance was secured to have outside sales within 300 feet of the R District. There would also have to be a discussion addressing the screening issues and the hard surface, as well. This would also be addressed with the City when Mr. Prado filed for the building permit.

Mr. Henke asked Mr. Prado if he understood what Ms. Back had explained and Mr. Prado confirmed that he did understand.

Mr. Henke asked Mr. Prado if he would like to continue this case to encompass the additional variance request, or would he like to open his business as soon as possible

and come back before the Board for the additional variance request. Mr. Prado stated that he needs to open his business as soon as possible.

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, Snyder, Tidwell, Van De Wiele, White “aye”; no “nays”; no “abstentions”; none absent) to **APPROVE** the request for a Special Exception to allow a CNG auto conversion shop and auto sales (Use Unit 17) in a CS Zone (Section 701, Table 1). Board approval is subject to the following conditions: 1) that there is no open air storage of parts, autos or trucks for sale; 2) all parking and driving surfaces are to be concrete or asphalt; 3) all work to be performed is to be inside with no outside work or storage to be allowed. Approval is subject to conceptual site plan on page 2.22. The Board directs staff to make the additional variance request at the lesser fee charge of \$100.00. 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:

E/2 W/2 E/2 LT 1 SEC 6 19 14, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

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NEW BUSINESS

21478—Oil Capital Neon / Brandon Moydell

Action Requested:

Variance to allow for a digital sign to be visible within 200 feet of an R District (Section 1221.C.2.c). **LOCATION:** 8111 East 61st Street (**CD 7**)

Presentation:

Brandon Moydell, Oil Capital Neon, 4419 West 55th Place, Tulsa, OK; stated this request is to address a proposed LED message center within 200 feet of a residential district. In this case, the residential district is immediately south of the subject property on 61st Street. The City has already approved the same LED message center for the west side of the subject sign based on the fact that the west side of the sign does not face the residential district. The request today is an attempt to have an identical or similar message center on the east side of the subject sign. The hardship in this case is the unique geographical layout of the subject property. The applicant stated that this

business has no exposure for west bound traffic on any major arterial street due to the location of the business is on the far north end of the shopping center, Eaton Square. This creates a hardship for this business. Most traffic would approach the subject business, Wichita Technical Institute (WTI), west bound on 61st Street from Highway 169.

Mr. Van De Wiele stated the apartments are in a commercial zoning, and he asked staff if that was a consideration in this case. Ms. Back stated staff researched that aspect and worked with the Legal Department for a definition. The code addresses a residential area and Chapter 18 defines what is designated as a residential area. Those apartments within the CS zone are not within a PUD or Corridor District, therefore, they are viewed as CS zoned properties and the use does not trigger the code. Additionally, after extensive research with City staff, per code the CS zoning for the apartments stands as CS zoning and they are not recognized as residential dwellings.

Mr. Van De Wiele asked Mr. Moydell what time the last class started and ended. Mr. Moydell deferred to Mr. Edwards.

Interested Parties:

Todd Edwards, 8421 East 61st Street, Tulsa, OK; stated that the evening session starts at 6:00 P.M. and end at 10:40 P.M., Monday through Thursday.

Erio Comici, WTI Administrator, 10733 Big Bend Road, St. Louis, MO; stated he does not understand how adding the sign for WTI would adversely impact the residents across the street because illumination already exists in the area of the sign site.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White “aye”; no “nays”; none “abstaining”; none absent) to **APPROVE** the request for a **Variance** to allow for a digital sign to be visible within 200 feet of an R District (Section 1221.C.2.c), subject to per plan on page 3.19. This approval is with the conditions as stipulated in the applicant’s letter on page 3.18 with paragraph number three of that letter being applicable. Paragraph 3 states, “The sign is digital display without harsh lights or glaring illumination. The sign will have a softer digital lighting which should negate any nuisance concerns. To further ease such concerns, the sign will be equipped with an automatic timer so that it remains lit only between the hours of 7:00 A.M. and 11:00 P.M. and will be in full compliance with City regulations for brightness not to exceed 500 NITS in the evening and 6500 NITS during daytime hours.” Finding that the hardship to be the configuration of the property as a whole. The location of the business seeking the advertising sign is landlocked and has no means of outwardly displaying any sort of advertising sign to show its location. 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:

PRT LT 1 BEG NWC LT 2 TH N200 E154.19 CRV LF 233.13 NE190.12 CRV RT 233.73 E328.73 CRV RT 338.16 SE64.86 CRV LF 283.58 SE120.45 CRV RT 196.35 S90 W1257.35 N300 W290 POB & LT 2 BLK 1, MEMORIAL SOUTH CENTER, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21479—John A. Gaberino

Action Requested:

Verification of the spacing requirement for an Adult Entertainment Establishment (Use Unit 12a - bar use) of 300 feet from a park, school, or church in the CBD District (Section 1212.a.C.3.b). **LOCATION:** 823 East 3rd Street **(CD 4)**

Ms. Snyder recused herself at 1:35 P.M.

Presentation:

John Gaberino, 823 East 3rd Street, Tulsa, OK; no presentation was made but Mr. Gaberino was available for questions.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-1 (Henke, Tidwell, Van De Wiele, White “aye”; no “nays”; Snyder “abstaining”; none absent) based upon the facts in this matter as they presently exist to **ACCEPT** the applicants 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:

PRT LTS 4 THRU 7 BEG NEC LT 4 TH S200 W70 N125 W70 N10 E70 N54 E23 N11 E47 POB BLK 5, HODGE ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

Ms. Snyder re-entered the meeting at 1:37 P.M.

21480—R. Clio Robertson

Action Requested:

Variance of side yard setback in an RS-1 District from 5 feet to 2 feet (Section 403, Table 3). **LOCATION:** 6517 South Timberlane Road **(CD 2)**

Presentation:

Clio Robertson, 6517 Timberlane Road, Tulsa, OK; stated he has owned the subject property for approximately 11 years. Unbeknownst to him, until he had the property surveyed, he did not know he was in violation of a setback of the side yard. There is a cabana is approximately 2'-6" from the property line. He would like to add a structure to the existing cabana and create an outdoor kitchen by removing the curved wall of the existing cabana. The hardship would be if he had to remove the cabana structure and move it to the south it would restrict his access to the storage area and the side yard. Also, the cabana is plumbed for bathrooms, heating and cooling. He does not think anything will be built on the property to the north because it is Southern Hills Country Club.

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, Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Variance of side yard setback in an RS-1 District from 5 feet to 2 feet (Section 403, Table 3), subject to conceptual site plan on page 5.7. Having found that the structure to be installed will not substantially encroach more than the current structure, and that the property to the north will not be materially affected. 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:

**PRT SE NW BEG 25E NWC SE SE SE NW TH E245.89 SE241.24 SW35.7
SWLY115.16 NWLY231.43 N141.88 POB SEC 5 18 13 1.44AC, CITY OF TULSA,
TULSA COUNTY, STATE OF OKLAHOMA**

19983-A—Joshua Walker

Action Requested:

Elimination of existing tie agreement **OR** Modification of previously approved tie agreement (BOA-19983). **LOCATION:** 1325 East 15th Street, 1437 South Quaker Avenue **(CD 4)**

Presentation:

Josh Walker, 1325 East 15th Street, Tulsa, OK; stated he is requesting the elimination of an old tie agreement. A refinancing of the property triggered this request. There is an existing 70 year lease with the church, who owns the other property. The tie agreement states that the property cannot be encumbered with a mortgage.

Mr. Van De Wiele asked Mr. Walker if the issue is the mortgage on the property, or something else. Mr. Walker stated the lender does not like the clause “may not be sold separately”.

Mr. White asked Legal if the Board were to eliminate the tie agreement, would it encumber or endanger the earlier actions of the Board. Mr. Swiney stated he could not imagine any other parties being impacted by the dissolution of the tie agreement.

Mr. Van De Wiele asked if the tie agreement is eliminated, can the Board still maintain the requirement that there is a lease between the two parties. Mr. Walker stated that the church owns the back 25 feet of the parking lot, but his company built and improved the parking lot for the use of both parties. The church uses the parking lot on Wednesday evening and on Sunday, and the tenants of his property use the parking for the office employees for the week.

Mr. Swiney stated the tie agreement links together two lots that are really separate lots, and he does not see a reason for the lots to be linked.

Mr. Van De Wiele asked Mr. Swiney if the Board could replace the condition of the tie agreement with the condition of a lease, because this property does not have sufficient legal parking. Mr. Swiney stated the landowner is going to need sufficient parking and the lease takes care of that aspect. When the lease expires, or terminated prior to the 70 year lease agreement, the landowner will then be out of compliance. If at any time the landowner is out of compliance, the City Inspectors would contact the landowner and inform them that the parking situation must be addressed.

Ms. Back stated that, on the original case, the action requested was a variance of the required parking spaces from 90 spaces to 66 spaces, a special exception to allow required parking on a lot other than one containing the principle use, and a variance of the off-street setback from the centerline of an abutting street from 50 feet to 30 feet to permit retail office uses and associated parking. There was no mention of the lease. If the Board is inclined to release the tie agreement it does not release the conditions of the previous Board approval.

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, Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the Elimination of existing tie agreement from Case Number 19983; for the following property:

LTS 13-15 & PRT VAC ALLEY ADJ ON E BEG SECR LT 13 TH N107.49 E1.86 S107.49 W1.26 POB BLK 7, LT 16 BLK 7, BELLVIEW ADDN, 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 1:54 p.m.

Date approved:

Apr 23, 2012

Chair