

**BOARD OF ADJUSTMENT**  
**MINUTES** of Meeting No. 1101  
Tuesday, September 10, 2013, 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>
Snyder Tidwell, Secretary Van De Wiele White, Vice Chair	Henke, Chair	Miller Back Sparger Walker	Swiney, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Thursday, September 5, 2013, at 10:04 a.m., as well as at the Office of INCOG, 2 West Second Street, Suite 800.

After declaring a quorum present, Vice Chair White called the meeting to order at 1:00 p.m.

Mr. White explained to the applicants that there were only four board members present at this meeting, and if an applicant would like to postpone his or her hearing until the next meeting he or she could do so. If the applicant wanted to proceed with the hearing today it would be necessary for him to receive an affirmative vote from three board members to constitute a majority and if two board members voted no today the application would be denied. Mr. White asked the applicants if they understood and asked the applicants what they would like to do. The applicants nodded that they understood and no one stood to request a continuance.

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

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**Presentation:**

**Justin Reed**, Oil Capital Neon, 4419 West 55<sup>th</sup> Place, Tulsa, OK; stated he represents Meyers-Duren Harley-Davidson Motor Cycles located at the subject address. Meyers has an existing 5'-0" x 10'-0" changeable letter board, and they are asking to have the letter replaced with an Electronic Message Center. The display height of the EMC will be 5.04 feet with a width of 9.24 feet. The cabinet height will be 5.37 feet with a cabinet width of 9.57 feet. Meyers-Duren are the only occupants in the building, and they are a stable business within the community.

Mr. White asked if the EMC would be in the same location as the existing sign. Mr. Reed answered affirmatively.

Mr. Van De Wiele stated that his concern is that one or two of the residential tracts can have the proposed sign shining into their backyard.

Mr. White asked Mr. Reed if the top portion of the existing sign was to remain the same. Mr. Reed answered affirmatively.

Mr. Van De Wiele asked Mr. Reed if the top portion of the existing sign is currently lit. Mr. Reed answered affirmatively. MR. Van De Wiele asked Mr. Reed how much brighter the EMC would be than the existing sign. Mr. Reed stated the EMC will have 16,900 LEDs in the face and will be substantially brighter than the existing sign.

Ms. Back stated that the proposed sign will still need to comply with the code for lighting and signage, so it will not be outside the parameters of the City code.

Mr. Van De Wiele asked Mr. Reed if the top portion of the existing sign stayed lit 24 hours a day. Mr. Reed answered affirmatively and informed the Board that the entire building is wrapped in neon lights that stay lit 24 hours a day, 7 days a week.

**Interested Parties:**

There were interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **TIDWELL**, the Board voted 4-0-0 (Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Henke absent) to **APPROVE** the request for a **Variance** to allow an electronic message center (EMC) to be located within 200 feet of an R zoning District (Section 1221.C.2.c), subject to per site plan 2.8. Finding that the neighborhood on South Peoria has many other signs that similar in brightness and design as the proposed sign. This approval is subject to the conditions that only the electronic message center portion of the existing sign will be operated during the hours no longer than 7:00 A.M. to 10:00 P.M. There will be no blinking, twinkling, flashing,

rolling, or animation. Scrolling will be only from right to left. 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:

**ALL LT 24, EVERGREEN SUB, EVERGREEN 2ND ADDN AMD RESUB TR16-17&19 & PRT 18, RIVERVIEW VILLAGE B14-20, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

**21619—John Plum**

**Action Requested:**

~~Variance to allow an electronic message center (EMC) to be located within 200 feet of an R zoning District (Section 1221.C.2.c);~~ Variance to allow an electronic message center (EMC) in an RM-2 District (Section 402.B.4). **LOCATION:** 1324 North Sheridan Road East **(CD 3)**

**Presentation:**

**John Plum**, 1324 North Sheridan Road, Tulsa, OK; stated he is representing The Road on Sheridan Church, and he is before the Board with Peter Jansen with Accurate Neon. He has been the lead Pastor for The Road on Sheridan Church for the last five years. The church is determined to help impact the community. The variance is requested for two specific reasons. The Road is an older church comprised mainly of older staff, and the existing sign has changeable letters. However, the sign has become a health risk for the staff responsible for the changing of the message on the sign. The custodian is over 70 years of age and has been with the church for over 20 years. Each time he has to change the sign he must stand on a ladder to reach the message portion of the existing sign, and at times they have used the church bus, backed up to the sign, to change letters on the sign. The risk increases in windy or inclement weather conditions. As a church they want to reach the Tulsa community with the message of why they are a church. An EMC will allow the church to reach the community to a greater extent. The church is also partner with two Tulsa public schools, Hamilton Elementary and McKinley Elementary. These two schools utilize the church facilities and building throughout the year, and the church helps the schools to communicate with their constituents as well.

Mr. Van De Wiele asked Ms. Back why the Variance request pertaining to the 200 foot limitation was struck. Ms. Back stated that Variance was struck because the church is within a R District, and that Variance pertains to commercial code in a residential district.

Mr. White asked Mr. Plum what the proposed hours of operation are to be for the proposed EMC. Mr. Plum he would like to ask for 7:00 A.M. to 10:00 P.M., seven days a week. These hours will cover not just the church services but everything the church holds in the evening. He would also like to have the top portion of the existing sign to remain lit because it contains the name of the church and it is separate from the EMC.

Mr. Van De Wiele asked Mr. Plum if the church was keeping the top portion of the existing sign. Mr. Plum stated there will be a new backlit sign installed because the name of the church has been changed.

Mr. White asked Mr. Plum if there would be any other messages displayed on the EMC other than church messages. Mr. Plum stated the church will be assisting the partner schools with their information, i.e., parent teacher conference times and dates.

**Interested Parties:**

Not at this time.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **VAN DE WIELE**, the Board voted 4-0-0 (Snyder, Tidwell, Van De Wiele, White “aye”; no “nays”; no “abstentions”; Henke absent) to **APPROVE** the request for a Variance to allow an electronic message center (EMC) in an RM-2 District (Section 402.B.4), subject to conceptual site plan on 3.8 for the location of the sign and 3.9 for the dimensions and height of the EMC on the to be constructed sign. This approval is subject to the further conditions that the EMC will be operated during the hours no longer than 7:00 A.M. to 10:00 P.M. There will be no blinking, twinkling, flashing, rolling, or animation. Scrolling will be only from right to left. The Board has found that the current sign is in need of replacement and the message center is necessary to convey community messages, not only to the members of the church but also to those involved the local schools. This is further subject to the provisions of the Code 1221 limitations. 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 1 & 2 & 3 BLK 3, EXCHANGE ACRES, MAPLEWOOD ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

## **21620—Carl Clay**

### **Action Requested:**

Special Exception to allow an auto auction use (Use Unit 17) in a CS District, per conceptual site plan (Section 701). **LOCATION:** 11910 East 11<sup>th</sup> Street South **(CD 6)**

### **Presentation:**

The applicant was not present. The Board moved this case to the end of the agenda.

### **Interested Parties:**

There were no interested parties present.

### **Comments and Questions:**

None.

### **Board Action:**

No Board action required at this time.

## **21621—Joe Admire**

### **Action Requested:**

Special Exception to allow a variety of low impact uses within (Use Unit 11 and Use Unit 15) in a commercial structure located in an RM-1 zoned District (Section 401, Table 1). **LOCATION:** 2923 West 40<sup>th</sup> Street **(CD 2)**

Ms. Back stated that the Use Unit 15 as requested is not an allowed use in the RM District. None of the Use Unit 15 uses would be allowed to be considered in an Use Variance, therefore, consider the Use Unit 11 in this case.

### **Presentation:**

**Linda Fitzgerald**, 5047 South 26<sup>th</sup> West Avenue, Tulsa, OK; stated she is with Keller-Williams and is the realtor for the subject property.

Mr. White asked Ms. Fitzgerald if she heard Ms. Back announce that Use Unit 11 is the only use to be considered for the subject property. Ms. Fitzgerald nodded. Mr. White stated there is a list of uses applicable for Use Unit 11, and he asked Ms. Fitzgerald if she had chosen which use would best suit her needs. Ms. Fitzgerald asked the Board's permission to tell the story of the subject property. Mr. White answered affirmatively.

Ms. Fitzgerald stated the subject building was built in 1950 as a neighborhood grocery store. It was a grocery store and a convenience store until 1980. At that time the present owner purchased the building and came to the Board of Adjustment for a

Variance to operate his business. The neighborhood was pleased the current owner was not going to operate a convenience store any longer because of the store hours and it had become a neighborhood hangout for kids. The current owner operated his business in the subject building from 1980 until 2011. At that time the owner had an employee that was being trained to take over the business operations after the owner's retirement. Unfortunately, this employee was the person that was shot and killed at the Rib Crib Restaurant on Harvard Avenue. The owner then decided to close the business and retire. She had the building sold when she found out the prospective owner wanted to change the building for his business. Due to time constraints and the need to come before the Board of Adjustment she lost that sale. There is another client that is very interested in the subject building depending on the outcome of today's hearing. This prospective client wants to have a similar business as the previous owner. She has spoke with the neighborhood and they are in support of the proposed business, but the conversations were based on the Use Unit 15 usage. The building was built to be the neighborhood grocery store, and it would be cost prohibitive to remodel the building into a house. One block to the east of the subject building is light industrial businesses. She did not find out until midmorning that the Use Unit 15 was taken out of consideration, so she is asking the Board to allow the business that is currently in the building to continue which is a shop type business. The business is open five days a week from 7:00 A.M. to 4:00 P.M. There is no retail business and the UPS truck is the only daily vehicle on site.

Mr. White asked Ms. Fitzgerald if she had seen the list for the Use Unit 11 uses. Ms. Fitzgerald stated she had the list in front of her. She stated that Use Unit 11 uses appear to be retail business, and the current business is not a retail business.

Mr. White asked Ms. Fitzgerald what business was in the subject building. Ms. Fitzgerald stated the old business was a clutch repair shop, and the repair work came in as a unit or a clutch assembly. There was nothing disassembled or assembled on the subject site, nor would the next business be either.

Ms. Fitzgerald stated the next business would have the product delivered by UPS, the unit would be repaired and then shipped back to the point of origin by UPS.

Mr. White asked Ms. Fitzgerald what the proposed business is to be. Ms. Fitzgerald stated the business handles refrigeration units from trucks. The unit would be removed from the truck and shipped to the subject site for repair, and after repairs the refrigeration unit would be returned to the point of origin.

Mr. Van De Wiele asked if that business could continue to operate on the subject site. Ms. Miller stated that use is not listed under Use Unit 11. Mr. Swiney stated that he too did not see that type of use listed under Use Unit 11. Mr. Swiney stated that the proposed business seems to be more of an industrial business, the repair of automotive parts. Mr. White stated it would be IL at the least.

Ms. Fitzgerald stated that one block to the east from the subject site that type of business is in place.

Ms. Miller stated that Ms. Back has placed on the overhead screen the 1980 Board action that allowed a Variance. The code may have been the same then as it is today, but State Statutes now does not allow a Use Variance for municipalities. Mr. Van De Wiele stated that is true unless it is strictly limited to clutch repair. The previous conditions are not broad enough to continue the refrigeration repair.

Mr. White stated that he realizes that Ms. Fitzgerald is under a time limitation with her client, but she must specify a use in the listing. The Board cannot issue a blanket Use Unit 11. The Board has dealt with specific Use Unit requests before with no more than three or four options. There are about 20 options on the list that was provided, and there are a few that would require parking considerations.

Ms. Fitzgerald stated there is no parking problem. Mr. White stated there could be a parking conflict by the code depending on a use that was chosen from the list.

Ms. Fitzgerald stated that where the subject building is located is not a retail area. It is located in a quiet forgotten area of Tulsa. To keep the building as retail would not work because it is not in a traffic flow area. The building built for a purpose and since the City has changed things, should the building be demolished? Even if the building were under a lease option it would be difficult to lease for retail purposes because leasor would be looking for traffic. The businesses that are in the same area do not deal with the public, they are UPS businesses.

Mr. White stated there are items listed under Use Unit 11 that are not retail driven businesses, they are office related businesses.

Mr. Van De Wiele stated that legally the Board cannot grant her a Special Exception for the type of use the prospective buyer for the way he wants to use the premises. Ms. Fitzgerald asked if the business were to continue in the business they are in is that possible? Mr. Van De Wiele asked if she was referring to the automotive clutch repair. Ms. Fitzgerald stated it is automotive. Mr. Van De Wiele asked Ms. Back to place the 1980 conditions from the 1980 Variance approval. Ms. Back placed the conditions on the overhead screen. Mr. Van De Wiele told Ms. Fitzgerald that the conditions she was seeing on the overhead screen had been approved 33 years ago, and the conditions were very specific to automotive clutch repair, stressing the word clutch. Ms. Fitzgerald asked if her client could operate a clutch and refrigeration repair business from the subject building, because every business does expand.

Mr. Van De Wiele asked Mr. Swiney if the Board could amend previously granted Variances. Mr. Swiney stated that the Variance that is projected on the overhead screen is the Variance that was granted for automotive clutch repair service and that is all. Ms. Fitzgerald asked if the prospective business was grandfathered in. Mr. Van De Wiele stated that she could be for clutch repair.

Mr. White asked how long had it been since clutch repair had been performed in the subject building. Ms. Fitzgerald stated that it has not been a full time operation but there are still vendors that are being handled.

Mr. White stated there are several choices on the Use Unit 11 listing and one of those choices could be chosen. Ms. Fitzgerald stated that no one is going to buy the subject building for one of the listed choices.

Ms. Back stated that what is before the Board today is the Use Unit 11 for the applicant, and that is what has been advertised. So in that, the applicant can either choose two or three uses that are listed that can possibly be considered by the Board to receive approval today and to keep the building a commercial use building. Or the Board could continue the case and the applicant could have INCOG re-advertise for another Use Unit, but not the automotive. The automotive is not an allowed use within the zoning district. For the building to be marketed as a commercial building, a potential buyer could come before the Board for their specific use, might be an option. Ms. Back suggested that Ms. Fitzgerald chose three or four uses to keep the building as a commercial building and market it as a commercial building. Ms. Fitzgerald stated that if she brought the same potential buyer before the Board the request would not be accepted. Mr. Van De Wiele asked Ms. Fitzgerald if she was speaking of the current potential buyer. Ms. Fitzgerald answered affirmatively. Ms. Back stated the Board cannot do that. Ms. Fitzgerald asked the Board where she was to go from here. Mr. Van De Wiele stated the answer is a different buyer. Ms. Fitzgerald stated that is not fair. This is a beautiful building that was built to be a commercial building, and the City has changed the code. Mr. Van De Wiele stated that actually it was not the City but the State that changed the code.

Ms. Miller stated that currently State Statutes do not allow for municipalities, like the City of Tulsa, to issue a Use Variance. Ms. Fitzgerald stated that the State should buy the building. Ms. Miller stated there are many other uses that can apply to the use of the building. Ms. Miller stated that Ms. Fitzgerald would just narrow the item list down to a couple of uses the Board could possibly grant an approval today, or she can request a continuance to allow time for further study of the list.

Ms. Fitzgerald stated that she has looked at the list. Everyone that has approached her about the purchase of the subject building could not acquire financing, and none of their potential uses were on the list. Mr. Van De Wiele asked Ms. Fitzgerald if the Genral Office listing could be used for the building. Ms. Fitzgerald asked if there could be a warehouse in the rear of the building with an office in the front. Mr. Van De Wiele it would be applicable if there was no on premissis sale of merchandise. Ms. Fitzgerald stated there would not be any on premises sale but there would be the repair of inventory that is being delivered.

Ms. Swiney stated that the choices under Use Unit 11 are numerous and there are several that could be applied, i.e., computing service, data processing, insurance

agency. Ms. Fitzgerald that it could take her another ten years to find that type of client. Ms. Fitzgerald wanted to know why the building could not contain an office with a warehouse. That would be the same as a computer repair company with an office while repairing computers in the rear with inventory on site.

Mr. White stated that building is located in a RM zoned area. Ms. Fitzgerald stated that was where the problem lies.

Mr. Van De Wiele stated the Board is limited to either granting some limited portion of the Use Unit 11 listing. Ms. Fitzgerald immediately asked if the Board could suggest to her something that would have an office and warehouse. Mr. White told her not under the current zoning.

Mr. Van De Wiele stated that the same State Statutes to give her relief are the same State Statutes that state the Board cannot give her the relief she is requesting. The Board is not allowed to read in between the lines to fit something into a situation. Ms. Fitzgerald asked that if she wanted to open the doors back up to a clutch business she would be allowed to do so? Mr. Van De Wiele stated that as long as there has not been a gap longer than three years, because Variance expires after three years of nonuse.

Ms. Back told Ms. Fitzgerald that if she were to consider the General Office use from the Use Unit 11 listing, that is very broad category that would be something the Board could consider. Mr. Van De Wiele stated the Board is sympathetic to Ms. Fitzgerald's predicament.

Ms. Fitzgerald asked if she could add another business to the clutch business. Mr. Van De Wiele stated no and he does not want to approve something that she does not want or use. Ms. Fitzgerald stated that if she walks out of the meeting today then she has nothing. Mr. Van De Wiele stated that she does have the Variance that was granted in 1980.

Ms. Fitzgerald asked the Board if she could step into the hallway to speak with her client before a decision is finalized in this case. Mr. White granted Ms. Fitzgerald's request and moved this item to the end of the agenda.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

No action required at this time.

## **21620—Carl Clay**

### **Action Requested:**

Special Exception to allow an auto auction use (Use Unit 17) in a CS District, per conceptual site plan (Section 701). **LOCATION:** 11910 East 11<sup>th</sup> Street South (CD 6)

This case was on the agenda earlier and the applicant, or representative, has now arrived.

### **Presentation:**

**Nick Lombardi**, 3232 South Utica, Tulsa, OK; stated he is with Lombardi Commercial Real Estate Services is representing the applicant. Mr. Clay's intent is to construct a building on the property to have silent, telephone and e-mail auto auctions on the property.

Mr. Tidwell asked Mr. Lombardi if there would be bidders on the site. Mr. Lombardi stated that approximately 35% to 50% of the bidders would be on site at the time of the auction, with the auctions being held on Saturdays.

Mr. Van De Wiele asked if the auction inventory would be rolling over every week. Mr. Lombardi stated that it would be closer to once a month.

Mr. White asked Mr. Lombardi if the attendees would be inside the 14'-0" x 80'-0" modular building when the auctions are being held. Mr. Lombardi answered stated that is true because there is to be no bidding done outside with the balance of the lot being utilized to store the automobiles up for auction.

### **Interested Parties:**

**Danny Borrell**, 4943 East 4<sup>th</sup> Street, Tulsa, OK; stated he is not against the proposed use for the property. He is glad that the property will be cleaned up and used because it has become an eyesore for the neighborhood. He is concerned about the children in the neighborhood because there are three schools in the area, and would like to know about the traffic flow and the use of the existing ingress and egress. He is affiliated with the church that across the street and there are always large trucks using the church parking lot to turn around. He is also concerned with security because the church continually finds stolen vehicles left in the parking lot and the church has to have them towed. He is also concerned with the noise levels from the subject property because the church holds services on Wednesday. Mr. Borrell asked the Board if the tanks from the old gas station that used to be on the subject property had been dug up and removed. Mr. Borrell stated that he would also request the Board to require some sort of screening between the church property and the subject property, preferably a privacy fence similar to the fence the Howard Johnson's had in place when they were open.

**Charles Gobel**, 1938 South Evanston, Tulsa, OK; stated his concerns are the ingress and egress of the subject property. His property is immediately north of the church and he is also concerned about the children going to and from the three schools in the neighborhood.

**Rebuttal:**

Mr. Lombardi came forward and stated that the existing ingress and egress are to remain the same, with most of the deliveries coming from 11<sup>th</sup> Street. In regards to the screening request his client does plan installing a fence between the properties. Mr. Lombardi stated that he does have paperwork from the Corporation Commission stating that the underground gasoline storage tanks have been removed. The plan is to install concrete in the areas that need to have a hard surface, covering up the grass and gravel making a solid lot.

Mr. Van De Wiele asked how many cars would be on the lot at any one time. Mr. Lombardi stated there would be approximately 25 to 40 operable autos on the lot.

Mr. Snyder asked Mr. Lombardi if the cars for auction were going to be delivered on semi-trucks, or if they are driven to the subject property. Mr. Lombardi stated that some of the automobiles will be driven and some will arrive on flatbed trucks, similar to a tow truck.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **VAN DE WIELE**, the Board voted 4-0-0 (Snyder, Tidwell, Van De Wiele, White “aye”; no “nays”; no “abstentions”; Henke absent) to **APPROVE** the request for a Special Exception to allow an auto auction use (Use Unit 17) in a CS District, per conceptual site plan (Section 701), with the conceptual site plan being page 4.15 in the Board’s agenda packet. The approval is further conditioned that the subject property will be landscaped and screened as required by zoning code. No automotive repair work is to be performed on the site. No accumulation of waste is to be allowed on the property. There will be no inoperable vehicles be maintained on the property. 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:

**LT 1 BLK 1, ELEVENTH STREET II ADDN RESUB L2 B1 ELEVENTH ST ADDN,  
CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

**21622—William H. Duncan**

**Action Requested:**

Variance of the maximum floor area permitted for detached accessory buildings in the RS-1 district (based on floor area of principal residential structure) from 1,761 square feet (40%) to 2,261 square feet (51%) (Section 402.B.1.d). **LOCATION:** 4005 East 107<sup>th</sup> Street South **(CD 8)**

**Presentation:**

**William Duncan**, 4005 East 107<sup>th</sup> Street, Tulsa, OK; no presentation was made but the applicant was available for questions.

Mr. Van De Wiele asked Mr. Duncan if the proposed building was to be one story with a finished attic. Mr. Duncan stated the building is a one-story building and he would like to finish the rear 30 feet of the attic area to be a storage room and a play room.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **VAN DE WIELE**, the Board voted 4-0-0 (Henke, Snyder, Van De Wiele, White “aye”; no “nays”; no “abstentions”; Tidwell absent) to **APPROVE** the request for a **Variance** of the maximum floor area permitted for detached accessory buildings in the RS-1 district (based on floor area of principal residential structure) from 1,761 square feet (40%) to 2,261 square feet (51%) (Section 402.B.1.d), subject to conceptual plan 6.7 for the size and the location of the proposed workshop. The approval is also subject to the building to be constructed as a single story allowing a portion of the attic space to be finished, as described on page 6.7. The Board has found that the large lot will accommodate the accessory buildings and the footprint of the building would generally be approved for this size lot, however, the finishing of the attic space necessitates the variance requested today. 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:

**W116.67 E350 N263.63 NE SW SEC 28 18 13 .70AC, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

## **21623—Candace Parham**

### **Action Requested:**

Variance of the minimum lot width from 60 feet to 35 feet to permit a lot-split and lot combo (Section 403.A, Table 3). **LOCATION:** 2710 and 2716 West Easton Street North (**CD 1**)

### **Presentation:**

**Candace Parham**, 1440 South Marion Avenue, Tulsa, OK; stated she represents the estate of Robert and Virginia Scott. They were the owners of the subject parcels in today's hearing. One of the parcels has been disposed of through the estate to their child Teresa Myers, which is 2716. This is unplatted property and there has never been an abstract for either of the two parcels. The smallest of the two lots does not comply with the 60 foot requirement as it stands now. However, with the changes that are being proposed, which is to make them align with the existing fencing and to make them more appropriate for each of the parties the lots will still not comply with the 60 foot requirement on the smallest of the two lots. The property at 2710 was under contract, and that is when it was discovered upon building the abstract, obtaining a title opinion and having a survey performed. The actual home at 2716 was shown to encroach on this particular lot in excess of eight inches by eight feet. So the lot was divided based upon the existing fencing that has been in place for many, many years. In dividing up the two properties it really allowed the 2716 to have a front yard, which it does not have at this particular time. It also allows for the back yard of 2710 to comply with the existing fencing. There is also a lot-split of a lot-combination action that will be before the Board next week, if today's variance request is approved.

Mr. Van De Wiele asked Ms. Parham if she was proposing to take property from the 2710 lot and add it to the 2716 lot. Ms. Parham stated that is being done and there will be property taken from 2716 and adding it to 2710 making 2710 an actual rectangular shaped property with exact dimensions, which will look more like the properties in that particular unplatted area. The property that runs from Easton to the abutting street is an unusual property, because it runs the entire length of the lot. On the front end there is no driveway off Easton, the drive actually comes off the other street. There is a garage and a carport and it is entered from the back side, which is Cameron. What today's request will do, by changing it from a 15 foot property front on Easton to a 28 foot front will allow them to have a single driveway from the front side. Currently, the way the property is shaped the front yard at 2710 basically covers almost the entire front area of 2716.

### **Interested Parties:**

**Teresa Myers**, 2716 West Easton Street, Tulsa, OK; stated the property was her family home for 50 years, and she purchased the large house located at 2710 then purchased the house located at 2716. The house located at 2716 had a driveway years ago because the address is Easton but you must enter on Cameron, and she would like to have a driveway. The homes were built in 1930 when and the land is unplatted, and she asked the Board when the law went into effect that the lot needed to be 60 feet

wide. Mr. White stated that was 1970. Ms. Myers asked why the lot had to be changed when the houses were built in the 1930s. Mr. Van De Wiele stated because the lots are going to be split, and once the lots are moved the lots must comply. Mr. White stated that by splitting the lots she loses her grandfather capabilities when there are changes made.

Ms. Myers asked the Board if today's proposal meant 2716 was going to have less or more land, and will she be able to install a driveway for 2716. Mr. Van De Wiele stated that the existing 2716 has 8,500 square feet and after this 2716 will increase by about 500 square feet.

**Rebuttal:**

Ms. Candace Parham came forward and stated that she thinks the proposed change will actual be good for Ms. Myers, and satisfactory to her. This does make the property in line with the existing fence line so Ms. Myers will know exactly where her property is located. Her front yard is fenced, and if it were left the way it was the property of 2710 would actually encroach and take off part of her front porch and the majority of her front yard. By splitting the lots as proposed it will clear the title defects to each of the properties.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **VAN DE WIELE**, the Board voted 4-0-0 (Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Henke absent) to **APPROVE** the request for a **Variance** of the minimum lot width from 60 feet to 35 feet to permit a lot-split and lot combo (Section 403.A, Table 3), subject to the proposed plan 7.9. Having found that the lots in question have the lot width may be increasing and the lots will be a more uniform shape after the lot split and combination. Also, it is necessary to cure certain title defects with the lots in question. 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:

**That part of the Southeast Quarter (SE/4), of the Northwest Quarter (NW/4), of Section Three (3), Township Nineteen (19) North, Range Twelve (12) East of the Indian Base and Meridian, Tulsa County, Oklahoma, according to the U.S. Government Survey thereof, more particularly described as follows: Beginning 908.5 feet West of the Northeast Corner of the Southeast Quarter of the Northwest Quarter; thence West 15 feet; thence South 305 feet; thence East 45 feet; thence North 189 feet; thence West 30 feet; thence North 116 feet to the point of beginning, and known as 2716 West Easton Street, Tulsa, Oklahoma 74127**

**AND**

**A tract of land in the Southeast Quarter of the Northwest Quarter (SE/4 NW/4) of Section Three (3), Township Nineteen (19) North, Range Twelve (12) East of the Indian Base and Meridian, Tulsa County, Oklahoma, according to the United States Government Survey thereof, more particularly described as follows, to-wit: Beginning 823.5 feet West of the Northeast Corner of the Southeast Quarter of the Northwest Quarter (SE/4 NW/4); thence West 85 feet; thence South 116 feet; thence East 30 feet; thence South 59 feet; thence East 55 feet; thence North 175 feet to the point of beginning, and known as 2710 West Easton Street, Tulsa, Oklahoma 74127, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

**20601-A—Eller & Detrich – Lou Reynolds**

**Action Requested:**

Special Exception to permit an Emergency and Protective Shelter with accessory uses (Use Unit 2) only on Tract B (Section 1202); Special Exception to permit a Homeless Center and Emergency and Protective Shelter with accessory uses (Use Unit 2) on adjacent lots (Section 1202.C.7). **LOCATION:** South of the SW/c of North Harvard Avenue and East Apache Street **(CD 3)**

**Presentation:**

**Lou Reynolds**, Eller & Detrich, 2727 East 21<sup>st</sup> Street, Tulsa, OK; stated he represents Domestic Violence Intervention Services (DVIS). The Executive Director, Tracy Lyle and Angie Douglas who will operate the proposed facility and oversees the current the facility are present today also, if any specific questions arise in today's hearing. In 2007 this property and another property, the top three-fourths, was approved for a Special Exception for Catholic Charities to operate a homeless center and a place of worship. The homeless center was approved for 15 units. Part of the homeless center is to used for 12 adult pregnant women. DVIS was approved to have an emergency and protective shelter in the one-fourth of the property at that time. The Catholic Charities project, with funding, moved forward and the property was platted. The DVIS property had now found the funding and have been able to qualify and identify the exact type of project. DVIS plans to provide a shelter and support for the victims of domestic violence and sexual assault as well as their children. There will be a common drive shared by Catholic Charities and DVIS which will come off Harvard, and it will be the access. The difference between today's application and the previous application is that there has been a protective shelter added. This will provide 20 units for women and children only. There are some conditions on the use of the property that Mr. Reynolds believes the Board should know about and he asks they place on their approval of the Special Exception use. The only people that will be staying in the units will be DVIS processed clients. They will be subject to DVIS rules, women and children only. They have adult and children case counselors on site. Case management will be on site. Only clients and their children can stay overnight so there will be no overnight visitors or guests. There will be no male visitors in protective housing. Male relatives can visit in the

community room during business hours after approval of staff. There will be no use of drugs or alcohol in the shelter housing.

The emergency and protective shelter height will not exceed 30 feet. It will have a pitched roof and look similar to a house. The protective shelter housing will be limited to 22 feet in height and will be one story. There is a 50 foot setback from the centerline of Young Street, and approximately 100 feet from the nearest residence. On the south side of Young Street there will be an eight foot opaque screening fence with 8'-6" brick pilasters. There will be approximately 20 evergreen trees planted on the south boundary for additional screening. Lighting on the south side will not exceed ten feet in height. There will be a minimum of 20% landscaping of the subject property. All of this was previously approved in 2007, and Mr. Reynolds stated he has submitted conditions to the Board to provide for the differences in the project from the last time before the Board of Adjustment.

Ms. Snyder asked Mr. Reynolds if there were to be no men at the facility. Mr. Reynolds stated there were to be no men in the shelter protective housing. One unique feature is that inside the emergency and protective shelter there will be a special secured unit for male victims of domestic assault, and it is expected to have five or six cases a year. In a typical month there are 40 to 50 women and 40 plus children, and if there is a male assault victim there will be secured area inside the protective shelter.

Mr. White asked Mr. Reynolds if there would be security on site. Mr. Reynolds stated there will be security cameras and security on site, and there will be people on the property 24 hours day. During the main part of the business day there will be over 12 employees and volunteers. There will be a gated entry into the facility which will be a wrought iron fence so someone cannot enter without permission.

Mr. White asked Mr. Reynolds if the security was going to be certified security. Mr. Reynolds stated he was not sure about the but the property has been designed by security experts.

Mr. Swiney asked Mr. Reynolds if the homeless center was the primary use of the property with the emergency and protective shelters being the accessory use. Mr. Reynolds stated the emergency and protective shelter are the primary use of the property and the protective shelter housing is an accessory use of the property under the principle use.

Mr. Van De Wiele asked Mr. Reynolds if there would be an issue if there was an 18 year old son brought into the facility by a parent. Mr. Reynolds stated the facility staff has been able to work with that and there are rules in place to deal with the situation.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **VAN DE WIELE**, the Board voted 4-0-0 (Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Henke absent) to **APPROVE** the request for a Special Exception to permit an Emergency and Protective Shelter with accessory uses (Use Unit 2) only on Tract B (Section 1202); Special Exception to permit a Homeless Center and Emergency and Protective Shelter with accessory uses (Use Unit 2) on adjacent lots (Section 1202.C.7), subject to the conceptual plan known as Exhibit A-2 submitted today, September 10, 2013. The approval is subject to the conditions on the use of the protective housing portion of the project, Tract B, which are the ten conditions submitted today, and they are as follows: 1) DVIS processed clients only; 2) subject to DVIS rules; 3) women and children only; 4) adult and children counselors on site; 5) case management on site; 6) only clients and their children can stay overnight; 7) no overnight visitors; 8) no male visitors in protective housing; 9) male relatives can visit in the community room only during business hours, after consultation with staff; 10) no usage of drugs or alcohol at the center. The Catholic Charities conditions in the original application for Tract A only are to remain in place. 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:

**A TRACT OF LAND THAT IS PART OF THE N/2 OF THE NE/4 OF SECTION 29, T-20-N, R-13-E OF THE INDIAN BASE AND MERIDIAN, CITY OF TULSA, TULSA COUNTY, OKLAHOMA, ACCORDING TO THE UNITED STATES GOVERNMENT SURVEY THEREOF, SAID TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT:**

**STARTING AT THE SOUTHEAST CORNER OF SAID N/2 OF THE NE/4, THENCE S 89°58'16" W ALONG THE SOUTHERLY LINE OF SAID N/2 FOR 50.00 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF NORTH HARVARD AVENUE; THENCE CONTINUING S 89°58'16" W ALONG SAID SOUTHERLY LINE FOR 435.00 FEET TO THE 'POINT OF BEGINNING' OF SAID TRACT OF LAND; THENCE CONTINUING S 89°58'16" W ALONG THE SOUTHERLY LINE OF THE N/2 OF THE NE/4 FOR 589.30 FEET; THENCE DUE NORTH 201.07 FEET; THENCE DUE WEST AND PARALLEL WITH THE NORTHERLY LINE OF SECTION 29 FOR 175.34 FEET; THENCE DUE NORTH FOR 98.84 FEET; THENCE N 89°58'16" E AND PARALLEL WITH THE SOUTHERLY LINE OF THE N/2 OF THE NE/4 FOR 763.72 FEET; THENCE S 00°10'32" E AND PARALLEL WITH THE EASTERLY LINE OF SECTION 29 FOR 300.00 FEET TO THE 'POINT OF BEGINNING' OF SAID TRACT OF LAND. THE ABOVE DESCRIBED TRACT OF LAND CONTAINS 194,078.76 SQAURE FEET OR 4.455 ACRES, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

## **21624—Eller & Detrich – Andrew Shank**

### **Action Requested:**

Variance of the maximum sign display surface area from 32 square feet to 58 square feet in the OL District (Section 602.B.4.c). **LOCATION:** 5301 South Lewis Avenue East (CD 9)

### **Presentation:**

**Andrew Shank**, Eller & Detrich, 2727 East 21<sup>st</sup> Street, Suite 200, Tulsa, OK; stated he represents Perfect Smile Tulsa, and the client is an owner within the PUD-613. Many people drive past the existing sign and do not see it. Due to the topography of the area and the depth of the PUD the office itself is outside the line of sight of people traveling on Lewis Avenue which is the primary access point. Because of that hardship Mr. Andrews feels it is appropriate to increase the display surface area of the sign from the existing sign of 32 square feet to the proposed sign of 58 square feet. The entire sign is all static and the LED that is referred to in the Board's agenda packet refers to the bulbs within the sign itself. The size, the lighting, the setback all conform with zoning code. The reason the request is before the Board today is due to Perfect Smile consulting with their marketing firm who sent the message to them that their own customers were unable to locate the office.

### **Interested Parties:**

**Nicholas Hunter**, 2934 East 39<sup>th</sup> Street, Tulsa, OK; stated he owns the office building next door, south the of the subject property, and it has eight tenants. Two of those tenants are dentists, he being one of them. He speaks against the proposed sign. He personally does not believe in competition or advertising in the medical field. All eight of his tenants share one 32 square foot board and his patients and his tenants clients are able to find their offices. The newest tenant, which is a dentist also, did not see the existing sign as a problem either. Perfect Smile has their own 32 square feet sign located on Lewis and about 100 feet from his sign. It is apparent where his office is located. The Perfect Smile building is located on Heartbreak Hill and their sign is located eight feet above Lewis, and across Lewis 40 feet below where the proposed lit sign is to be located are houses. He thinks if the Board grants this request today there will be an outbreak of sign wars. Within a mile and half radius of his office Mr. Hunter stated there are 48 OL buildings in the district and several are multi-tenant that would like to have an advertising sign that would let their clients know where they are located. Mr. Hunter stated he thinks the proposed sign is gaudy and does not have a place in the neighborhood that has single family houses to the west and to the east, and a single family house approximately 100 feet to the north located on Lewis. Mr. Hunter presented the Board with two letters of opposition to the sign from interested parties that were unable to attend today's hearing.

Mr. Van De Wiele asked staff if the proposed sign were allowed to be where it is proposed to be without being on the subject property. Ms. Back stated the sign is allowed where it is currently located because the entire property is the PUD.

**Robert Hawks**, 2426 East 54<sup>th</sup> Street, Tulsa, OK; stated he is opposed to the proposed sign. He is concerned about property values and visual pollution. There are no signs in the area that of any size at all. The residential area is stable and a very nice area, and has lived there since 1972. The precedent would be terrible because once it is allowed everyone in the area will want a new sign and the Board will not be able to deny any new signs due the precedent being set.

**Rebuttal:**

Andrew Shank came forward. The Board addresses each case on the merits of its own facts. The notion of a potential sign war or the littering of the area with visual pollution lacks merit because this is distinguishable from the others. All the properties to the south of the subject property have curb cuts on Lewis. They lack the hardship of the subject property. As a matter of course, allowing the proposed sign does not in turn guarantee new signs in the area because a valid hardship would need to be shown each time. This case has a valid hardship based on the topography and the depth of the PUD. Except for the display surface area all aspects of the sign comply with the code.

Mr. Van De Wiele asked Mr. Shank if the client would receive more visibility of his sign if someone were to take hedge trimmers to the landscaping vegetation that is depicted in the picture provided to the Board in their packet. Mr. Shank stated the picture in question was taken back and at an angle because when a person drives by the sign is not obscured by the vegetation. Mr. Van De Wiele stated there is another picture in the packet that shows another view, and the sign does not look as covered up as the one picture.

Mr. Van De Wiele asked Mr. Shank if the client would receive better visibility if he were to move the existing closer to the corner of 53<sup>rd</sup> and Lewis. Mr. Shank stated there is right-of-way for Lewis surrounding the property and there is a detention area as well. The existing sign is appropriately set back from Lewis and because the sign is only 32 square feet it is hard to see from Lewis.

Mr. White asked Mr. Shank if the proposed sign were to be placed in the same location as the existing sign. Mr. Shank answered affirmatively. The sign has been approved per a detailed site plan filed in PUD-613.

Ms. Snyder asked Mr. Shank if he thought by making the existing sign a different color but maintaining the same size would make a difference. Mr. Shank stated that it is his understanding that from the marketing consultants the size is an important factor, but he would be willing to take a look at that concept if the Board were to prefer.

Mr. Van De Wiele asked Mr. Shank why the existing sign did not give his client everything that he needed, because it seems the only reason the request is before the Board is the doubling of the size of the sign to give advertisement to the dentist. That advertisement does not help locate the dentist but more towards driving business. Mr. Shank stated that even the two pieces above the advertisement portion would be

approximately 36 square feet and would still require relief from the Board. If that is something the Board is interested in, dropping that cabinet out, he would take the idea to his client though he does not know if that would be desirable for his client.

Mr. Hunter came forward and told the Board the Director of the Tulsa County Medical Society and an attorney in the building are vehemently opposed to the proposed sign. That will pose the question that if the attorney or the medical society wants signage on Lewis what would happen to the subject sign.

Mr. Shank came forward that he would like to request a continuance. No one contacted him, and to his knowledge, no one contacted INCOG stating opposition. He would like to have any opportunity to meet with tenants to speak about the project.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **TIDWELL**, the Board voted 4-0-0 (Snyder, Tidwell, Van De Wiele, White “aye”; no “nays”; no “abstentions”; Henke absent) to **CONTINUE** the request for a Variance of the maximum sign display surface area from 32 square feet to 58 square feet in the OL District (Section 602.B.4.c) to the Board of Adjustment meeting on October 22, 2013; for the following property:

**LT 3, BLK 1, Lewis 53 Office Park, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

**21621—Joe Admire**

**Action Requested:**

Special Exception to allow a variety of low impact uses within (Use Unit 11 and Use Unit 15) in a commercial structure located in an RM-1 zoned District (Section 401, Table 1). **LOCATION:** 2923 West 40<sup>th</sup> Street **(CD 2)**

**This case was postponed earlier in the meeting and is now being brought back before the Board for completion.**

**Presentation:**

**Linda Fitzgerald**, 5047 South 26<sup>th</sup> West Avenue, Tulsa, OK; stated she feels she has wasted her time and money because she was under the influence that this would be changed. In the meantime she is still attempting to sell the business as an operable clutch shop. If another business were interested having a use that is listed under the Use Unit 11, will it be okay to sell the business? Mr. Van De Wiele stated that if she were to pick three of uses on the list and there is a buyer that wants to do one of the

choices, and the Board has approved it, then it is okay. If a buyer wants to do something other than one of the three choices she has made they would need to come back to receive approval from the Board.

Ms. Fitzgerald asked the Board if she could use the entire listing for Use Unit 11 to sell the building. Mr. White stated that would be too broad so no, she must choose some uses.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **VAN DE WIELE**, the Board voted 4-0-0 (Henke, Snyder, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Tidwell absent) to **CONTINUE** the request for a **Special Exception** to allow a variety of low impact uses within (Use Unit 11 and Use Unit 15) in a commercial structure located in an RM-1 zoned District (Section 401, Table 1) to the Board of Adjustment meeting of December 10, 2013; for the following property:

**LTS 16 & 17 & S10 VAC ALY ADJ ON N BLK 38, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

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**OTHER BUSINESS**

None.

**NEW BUSINESS**

None.

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**BOARD MEMBER COMMENTS**

None.

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There being no further business, the meeting adjourned at 3:24 p.m.

Date approved: \_\_\_\_\_

*Frank X. Henry, Jr.*

Chair