

**BOARD OF ADJUSTMENT**  
**MINUTES** of Meeting No. 1103  
Tuesday, October 8, 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>
Henke, Chair Snyder Tidwell, Secretary Van De Wiele White, Vice 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, October 3, 2013, at 9:04 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.

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

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**MINUTES**

On **MOTION** of **TIDWELL**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the **Minutes** of the September 24, 2013 Board of Adjustment meeting (No. 1102).

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## **NEW BUSINESS**

### **21636—Eric Mikel**

#### **Action Requested:**

Special Exception to permit a charter school (Use Unit 5) in the RS-3 District (Section 401, Table 1); Variance to increase maximum floor area ratio from .5 to .61 (Section 404.F.1); Variance to decrease the minimum lot size from 12,000 square feet to 10,786 square feet (Section 404.F.2); Variance to decrease the minimum frontage from 100 feet to 76.9 feet (Section 404.F.3); Variance to decrease the minimum building setback from the west lot line from 25 feet to 8.5 feet (Section 404.F.4); Variance of the minimum lot area for a school from 1 acre (43,560 square feet) to 6,750 square feet (Section 1205.B.2.c). **LOCATION:** 448 East Latimer Place North **(CD 1)**

#### **Presentation:**

The applicant has requested a continuance to October 22, 2013 due to additional relief needed.

#### **Interested Parties:**

There were no interested parties present.

#### **Comments and Questions:**

None.

#### **Board Action:**

Special Exception to permit a charter school (Use Unit 5) in the RS-3 District (Section 401, Table 1); Variance to increase maximum floor area ratio from .5 to .61 (Section 404.F.1); Variance to decrease the minimum lot size from 12,000 square feet to 10,786 square feet (Section 404.F.2); Variance to decrease the minimum frontage from 100 feet to 76.9 feet (Section 404.F.3); Variance to decrease the minimum building setback from the west lot line from 25 feet to 8.5 feet (Section 404.F.4); Variance of the minimum lot area for a school from 1 acre (43,560 square feet) to 6,750 square feet (Section 1205.B.2.c) to the Board of Adjustment meeting on October 22, 2013; for the following property:

**LTS 1 2 BLK 5, DOUGLAS PLACE ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

### **21641—James Thornton**

#### **Action Requested:**

Variance to reduce the front yard setback from 70 feet to 47 feet in the RM-2 District (Section 403.A, Table 3). **LOCATION:** 1935 South Cheyenne Avenue West **(CD 4)**

**Presentation:**

The applicant has requested a continuance to October 22, 2013 due to additional and modified relief needed.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **TIDWELL**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White “aye”; no “nays”; no “abstentions”; none absent) to **CONTINUE** the request for a Variance to reduce the front yard setback from 70 feet to 47 feet in the RM-2 District (Section 403.A, Table 3) to the Board of Adjustment meeting on October 22, 2013; for the following property:

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

**21642—John W. Moody**

**Action Requested:**

Special Exception to permit Portable Storage Building Sales in a CS District (Section 701 & ~~Section 1601.A.1~~). **LOCATION:** NE/c South Mingo Road & East 62nd Street (CD 7)

**Presentation:**

The applicant has requested a continuance to October 22, 2013 due to needing site plan from the client.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **TIDWELL**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White “aye”; no “nays”; no “abstentions”; none absent) to **CONTINUE** the request for a Special Exception to permit Portable Storage Building Sales in a CS District (Section 701 & ~~Section 1601.A.1~~) to the Board of Adjustment meeting on October 22, 2013; for the following property:

The North 200 feet of the South Half of Lot 4, Block 3, Union Gardens Addition, an Additon to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof, LESS and EXCEPT the West 10 feet thereof for Street purposes; and

The South 97.60 feet of Lot 4, Block 3, Union Gardens Addition , an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof, LESS and EXCEPT the West 10 feet thereof for Street purposes; and

The South Half of Lot 3, Block 3, Union Gardens Addition, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

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### OTHER BUSINESS

#### 21644—All Steel Building Company

Special Exception to permit required off-street parking on a lot other than the one containing the principal use (Section 1301.D). LOCATION: 2020 Southwest Boulevard West (CD 2)

REFUND FOR \$605.30 because the applicant did not need relief.

#### Board Action:

On **MOTION** of **TIDWELL**, 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 Refund in the amount of \$605.30; for the following property:

**LTS 37 THRU 47 & W20 LT 48 & N15 OF VACATED 21ST ST ADJ ON S BLK 6, RIVERSIDE ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

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### UNFINISHED BUSINESS

#### 21625—Hayley Schaberg

#### Action Requested:

Variance of Land Area per Dwelling Unit from 2.2 acres to 1.19 acres (51,840 square feet) in an AG District to permit a Lot-Split (Section 303, Table 3).

LOCATION: 4404 South 193<sup>rd</sup> Avenue East (CD 6)

**Presentation:**

**Hayley Schaberg**, 18906 East 49<sup>th</sup> Place, Tulsa, OK; stated she is requesting a Variance for a lot-split because there is a large barn in the middle of the property. She has chosen the front of the property for the lot-split because she would like to build a home on the rear piece of property, and she feels a home would be more secure by placing it towards the main road instead of behind a barn.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **SNYDER**, 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 Land Area per Dwelling Unit from 2.2 acres to 1.19 acres (51,840 square feet) in an AG District to permit a Lot-Split (Section 303, Table 3), finding that there is a barn in the middle of the subject property requires an uneven lot-split. This approval is subject to the conceptual site plan on page 2.13 and the real estate agreement on pages 2.14, 2.15 and 2.16. 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:

**S/2 S/2 SE NE SEC 25 19 14 10ACS, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

**21627-Wagoner—Wilma Woodson**

**Action Requested:**

Special Exception to allow a Manufactured Home in an AG District for 20 years (Section 301, Table 1). **LOCATION:** 19409 East 21<sup>st</sup> Street South **(CD 6)**

Ms. Back informed the Board that in the AG District, unlike the residential district, there is not a one year time limit per the code. There is not a time limit in the agricultural district for a mobile home and the applicant is requesting 20 years.

**Presentation:**

The applicant was not present. Mr. Henke asked if there were any interested parties and at least two raised their hand. Mr. Henke asked the interested parties to come forward and express their concerns.

**Interested Parties:**

**Tony Robbins**, 19401 East 21<sup>st</sup> Street, Tulsa, OK; stated the subject property is directly behind him and the proposed site for the mobile home is directly behind his fence. He stated that the drawing he has shows the mobile home is proposed to be placed about 300 feet from his property line but it is actually less than 100 feet from his property line. He thinks that a mobile home next to his property would decrease the value of his home and property, and the driveway to the proposed mobile home site is right next to his garage.

**Ken Brashear**, 19764 East 11<sup>th</sup> Street (P. O. Box 883, Catoosa), Tulsa, OK; stated he owns the property northeast of the proposed site. What he does not understand is that the applicant has the property leased for two years yet she is requesting a 20 year Special Exception.

Mr. Van De Wiele asked Ms. Back if the applicant had given any indication of utilities. Ms. Back stated the applicant communicated with her via the telephone that she was working on getting the property ready so she could move on to it. The applicant did not specifically state whether she had a set of utilities or whether she had obtain a perk test for the soil, digging a well, digging a sewer system, etc. There was nothing specifically addressed. It is Ms. Back's understanding that there are no utilities currently run to the property.

Mr. Henke suggested this item be moved to the end of the agenda allowing time for the applicant to arrive. Ms. Back informed Mr. Henke that Ms. Woodson had just arrived.

**Presentation:**

**Wilma Woodson**, 19724 East Pine, #131, Catoosa, OK; stated she has the property rented for two years and after that time the rental agreement will go from month to month.

Mr. Van De Wiele asked Ms. Woodson if there is utility service to the property. Ms. Woodson stated there is and has been for at least nine years. Mr. Van De Wiele asked if that included water, electric, and sewer. Ms. Woodson answered affirmatively, and stated that everything is there including a septic tank.

**Rod Lacie**, 7284 East 540 Road, Claremore, OK; came forward and stated that the subject property had previously had a mobile home on it, and the subject property is located in Wagoner County. The subject property was annexed into the City of Tulsa with Rolling Hills.

Mr. Van De Wiele asked if the property was currently on septic system. Ms. Woodson answered affirmatively. Mr. Van De Wiele asked if the septic system had been tested by DEQ. Mr. Lacie stated the septic system had been checked.

Mr. White asked if the property had water lines. Mr. Lacie stated the property is served by well water, and the electrical lines are in and PSO has come out and checked them.

Mr. Henke stated that the site plan on page 3.17 shows the proposed site of the mobile home to be 300 feet from Mr. Robbins property, and he stated that it is only 100 feet away. Mr. Lacie stated that he did not think it was 300 feet and that it is probably more like 150 feet.

Mr. Tidwell asked Ms. Woodson how she had obtained the figure of 300 feet. Ms. Woodson stated that she had just walked it off.

Mr. White asked if the mobile home was intended to go north or south of the road that goes to the old barn. Mr. Lacie said the mobile home will be on the east side of 193<sup>rd</sup> and the north side of 21<sup>st</sup> Street. Mr. White stated that if a person were to drive down the driveway toward the barn and reaches the intersection on that driveway, will the intersection be before or after one reaches the mobile home. Ms. Woodson stated the mobile home will be placed on the east side of the barn. Mr. White told Ms. Woodson the reason he is asking this question is because the property is a flood plain.

Mr. Tidwell stated now that the 300 foot figure on the plan is incorrect, he asked Ms. Woodson how close she thinks the proposed mobile home will be to the neighbor. Mr. Lacie stated that he thought that it was more like 150 feet; he stated he did not put a tape on it.

Mr. Van De Wiele asked Ms. Woodson how old the mobile home is that she proposes to install on the subject property. Ms. Woodson stated that it is a 1981.

Ms. Snyder asked Ms. Woodson how old the septic system is, and does she have knowledge that the system is working. And has the system been approved? Mr. Lacie stated that he had run water into the septic system and once it filled up the laterals started working. Ms. Snyder asked where on the property is the septic system placed. Mr. Lacie stated that it is northwest of the proposed site.

Mr. Van De Wiele if the City of Tulsa or DEQ expressed any issue with the septic system being in the flood plain. Mr. Lacie stated that a man that used to work for the DEQ and now works for the City of Tulsa came out and checked the system, and he said that if the system cannot be approved they may have to install an aerobic septic system.

Mr. White asked if the septic system, as it sits now, has been approved. Mr. Lacie stated that he is not aware of it being approved.

Mr. Van De Wiele stated that the Board has paperwork in their agenda packet regarding the flood plain and where the manufactured home would sit in relation to the wetlands. What the Board is being told is that Ms. Woodson must have the property surveyed with the flood plain elevation shown on it, and showing that the mobile home is either not in the flood plain or that the mobile home will be built up above the flood plain. Mr. Lacie stated that he has approval from the DEQ on the aerobic septic system.

Mr. Henke asked Ms. Back to provide the applicant with 3.8 and 3.9, which is an e-mail from the City. Ms. Back stated that she had attempted to reach Ms. Woodson and did not receive a return call. Ms. Back stated that she is not aware if Ms. Woodson received a copy of the e-mail from the City.

Mr. Lacie asked where the flood plain is located. Mr. Van De Wiele had Ms. Back place a map on the overhead projector for all to see. Mr. Van De Wiele stated that the blue area on the map is the FEMA designated flood plain. Mr. Van De Wiele stated that based on the drawing the Board received it looks like the mobile home would be placed in the flood plain. Ms. Woodson stated that the mobile home would be no where near the flood plain. Mr. Van De Wiele stated that based on the material before the Board, if the Board were inclined to approve the request, she would need to have a survey completed to show the location of the mobile home in relation to the flood plain, and there may be further requirements based on the survey results.

Mr. Henke stated the Board has also received a letter from City Councilor Steele of District 6, and he asked Ms. Woodson if she had any conversation with him because he is opposed to the request she has made.

Mr. Van De Wiele stated that he also has concerns over the placement of a 30 year old mobile home for a time period of 20 years. Mr. Henke stated he would consider three or five years at the most.

Mr. Van De Wiele stated that he thinks Ms. Woodson is facing a lot of hurdles that she have to get over with the City, State, DEQ, FEMA and any other organization involved, before she can even get a mobile home set.

Mr. Henke stated that he would recommend a continuation of this case to allow Ms. Woodson to study what the expense involved would be for the project. He believes once she does a review of all the aspects involved placing a mobile home on the subject property she may find that it is not a suitable property.

Ms. Van De Wiele asked Ms. Back if she would provide Ms. Woodson with contact information and who she should speak to for the proper guidelines and proper placement of the mobile home. Ms. Back answered affirmatively.

**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 **CONTINUE** the request for a **Special Exception** to allow a Manufactured Home in an AG District for 20 years (Section 301, Table 1) to the Board of Adjustment meeting on October 22, 2013; for the following property:

**TR OF LAND IN E2 SW 7-19-15 DESC AS FOLLOWS: BEG AR SW COR OF SAID E2 - O°09'17"W ALONG W LINE OF SD E2 A DIST OF 880' TO A PT – S 89°59'28" E 148.50' – S 0°09'17"E 880' TO S LINE OF SE SW – S 89°59'28"W 148.50' TO POB AND THE W2 OS THE SW DEC 7 T19N R15E LESSS AND EXEPT THE S338' OF THE W646' OF THE SW OF SEC 7 T19N R15E, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

**21633-Osage—John 3:16 Mission, Inc. – Kevin Coutant**

**Action Requested:**

**Special Exception** to permit a residential treatment center/transitional living center (Use Unit 2) in an AG District (Section 301); **Special Exception** to reduce the spacing requirement of 1/2 mile (2,640 feet) from any other lot containing a detention/correctional, emergency and protective shelter, homeless center, residential treatment center and transitional living center use (Section 1202.C.7).

**LOCATION:** North of NE/c of West Edison Street and North 39<sup>th</sup> West Avenue (**CD 1**)

**Presentation:**

**Kevin Coutant**, 2 West 2<sup>nd</sup> Street, Suite 700, Tulsa, OK; stated Rev. Steve Whittaker, Senior Pastor and Executive Director of the Mission, is also present today should the Board have any questions. This property is a ten-acre parcel that is currently owned by the Tulsa Public School System. The building was former elementary school built in 1969, and is approximately 40,000 square feet under roof. The building is set back from Edison and between the subject building and Edison is a parcel that is not part of this application. The property is currently under contract with the Tulsa Public Schools and the contract is conditioned to the outcome of today's meeting. The zoning for the property is AG and is surrounded by AG zoning on all four sides with the exception of the southwest corner that touches an apartment project known as West Edison Plaza. The area is undeveloped all the way to 33<sup>rd</sup> West Avenue, and south and north. The application contains a request for relief from a spacing requirement of the code. The half mile requirement, in regards to similar uses, is being withdrawn being there is not another competing use within the spacing requirement of the code. The Mission has been in the community over 60 years and is an interdenominational Christian ministry. The Mission is committed to addressing the hungry and the homeless and those at risk in the community. The Mission has operated a homeless shelter for all of the 60 years, and since the 1980s has been located on North Cheyenne. The family and children's center located on North Cincinnati is a different ministry that reaches the community.

The recovery program, which is the program that would move into the subject property, is a program that has been operated by the Mission for approximately 30 years. It is a program that is designed to assist the men to transform from homelessness. It is a residential program that requires a written commitment from those who come into the program and it has a term of approximately one year. It is the experience and the view of the Mission that the circumstances, backgrounds, and issues that resulted in homelessness are quite complex. They include the spiritual, physical, educational, training, attitude, family relationships and all of this is addressed systematically as the students go through the recovery program. People are admitted to the program only if they are committed to it, and they are serious about life change. That is the desire of the Mission, to help those that come into the program and exit a year later with a job, with the family restored, a commitment to the home, with a commitment in their life to overcoming the problems that put in the program to start with. The Mission's program has been a very successful program. The average student's age is approximately 25 years of age. The students participate in the maintenance of the facility, and some of them attend college with the focus on the restoration and transformation from a very difficult unfortunate circumstance. It has been learned through those involved with this ministry around the country that this program functions best separated from the intensity of an urban environment. The wholesome rural and open area of the subject property is perfect. It's proximity to downtown makes it functionally efficient. The property will allow for expansion of the program and will allow the Mission to have a recovery program for women in a shelter building. The Mission is very enthusiastic about this proposal. John 3:16 Mission is certified excellent by AGRN, which is no small accomplishment and has recently been accomplished. This is a quality operation. There have been meetings held with the neighbors and they went well.

Ms. Snyder asked Mr. Coutant how many people would be at the facility. Mr. Coutant stated the original plan is for as many as 80, men and women total.

Mr. Van De Wiele asked Mr. Coutant if the staff stayed overnight at the facility. Mr. Coutant answered affirmatively.

**Interested Parties:**

**Brent Wellings**, 307 West 7<sup>th</sup> Street, Suite 1910, Fort Worth, TX; stated he is an agent for the Evelyn Marie Manion Trust which holds title to approximately 149 acres surrounding the subject property on all four sides. His client has requested he appear before the Board to inform them that there is no objection to the Special Exception being sought by John 3:16 Mission.

**Bob LaBass**, Tulsa Public Schools, 3027 South New Haven, Tulsa, OK; stated the TPS Board did not approve this proposal until there was a neighborhood meeting held. There was really no negativity at the meeting. The school system's goal was to have a good tenant take over this facility and they feel they have that in John 3:16 Mission. The Tulsa Public School system is very much in favor of this project.

**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 permit a residential treatment center/transitional living center (Use Unit 2) in an AG District (Section 301); with this Special Exception to reduce the spacing requirement of 1/2 mile (2,640 feet) from any other lot containing a detention/correctional, emergency and protective shelter, homeless center, residential treatment center and transitional living center use (Section 1202.C.7) withdrawn from the application at today’s meeting by the applicant’s representative. This approval is subject to testimony and certification received from the applicant regarding the spacing of the facility such as there is no other similar facility within the half mile radius. The Board has found 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; for the following property:

**The East 660 feet of the West 1320 feet of the North 660 feet of the South 1320 feet of Section 33, Township 20 North, Range 12 East of the Indian Meridian, Osage County, Oklahoma, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

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**NEW BUSINESS**

**21635—Tulsa Habitat for Humanity, Inc.**

**Action Requested:**

Variance of the front yard setback for a corner lot from 25 feet to 10 feet (Section 403.A, Table 3); Variance of the side yard setback from 15 feet to 10 feet in an RS-3 District (Section 403.A.5). **LOCATION:** 3707 East Pine Place **(CD 3)**

**Presentation:**

**Larry Vitt**, 6235 East 13<sup>th</sup>, Tulsa, OK; stated he is representing Tulsa Habitat for Humanity. The Variance request is due to the peculiar shaped property and the right-of-way is quite large going around the property. Relief is not really needed on the side of the property but it was requested for the sake of consistency around the property. There has been some concern raised about the proposed house blocking the view of the property owner to the east but the house will actually be in line with the property on the east so there will not be any obstruction.

Mr. Henke asked Ms. Back if there had been a question about fencing. Ms. Back stated that one of the abutting neighbors had sent an e-mail concerning the neighbor's rear yard facing the applicant's front yard, and an eight foot rear yard fence up against their front yard with the possibilities of that causing sight issues since the subject property is triangular in shape.

Mr. Vitt stated that he did not think there would be any sight issues because the right-of-way is 18 feet from the edge of the street to the property line, and the property owner cannot build a fence across the right-of-way. Should the owner decide to install a privacy fence on the subject property, the owner to the east already has an existing privacy fence on the north-south property line.

Mr. Van De Wiele asked Ms. Back how far out the subject property could extend a fence. Ms. Back stated that is the question that is concerning the next door neighbor because it is not a front yard fence which would normally go down to four feet. So the neighbor's concern is if a fence is taken to the point of where the property line ends, where would that be. Ms. Back then displayed a site plan on the overhead projector to show where the property line ends. Ms. Back stated she had tried to speak with the City but everyone has been busy and has not been able to discuss the issue with the City.

**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 the front yard setback for a corner lot from 25 feet to 10 feet (Section 403.A, Table 3); Variance of the side yard setback from 15 feet to 10 feet in an RS-3 District (Section 403.A.5), subject to the conceptual plan on page 5.7 with the understanding from the applicant that the home shown on the conceptual site plan will actually be constructed approximately two feet farther to the north. This approval is subject to the further condition that any fence in the rear, or east, of the home to be built will extend no farther south than the southern edge of the home as constructed. Finding that this unique triangular shaped lot represents a hardship. 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 21 LESS E70 THEREOF BLK 1, LOUISVILLE HGTS ADDN B1-8, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

**21637—Creative Stone Design**

**Action Requested:**

Special Exception to allow for mining limestone by surface and stripping methods (Use Unit 24) in an AG district (Section 301). **LOCATION:** 15115 East 11<sup>th</sup> Street (CD 6)

**Presentation:**

**Josh Roby**, 2109 North Main Street, Tulsa, OK; stated he is representing First Star Bank which is the successor to First National Bank of Muskogee which is the owner of the property. They are the co-applicant with Creative Stone Design which they are leasing the property to Creative Stone.

**Tom Morris**, Office Manager for Creative Stone Design, 9719 North 101<sup>st</sup> East Avenue, Owasso, OK; stated the subject property is a 20 acre tract. There has been an application made with the DEQ and the Oklahoma Department of Mines. Permits from both offices have been received to remove limestone using the surface strip mining method. This means there will be light equipment on site and removing the rock without the use of explosives or large pieces of equipment for deeper digging. The stone will be utilized for residential decorative use for boulder walls, backyard grills, landscape beds, etc. Most of the work is performed in Owasso in Stone Canyon and in south Tulsa in Traditions, and in other additions along 111<sup>th</sup> Street South. The company only has a single dump truck and two tractors that will be utilized for removing the stone. There has been perimeter silt fencing installed at the site. There has been a storm water discharge permit received from DEQ. The site will be maintained and inspected by the Oklahoma Department of Mines. Creative Stone will reclaim the land as the stone is removed so that when the excavating is done the land will have more value than it does currently. The operations will be limited to daylight hours. Previously there had been a mine operation on the subject property that was shut down because they did not have the proper permits.

**Mr. Henke stated that he should recuse himself from this hearing with Mr. Roby representing the bank. Mr. Henke left the meeting at 2:12 P.M.**

Mr. Tidwell asked Mr. Morris how long the previous company, the one that had been shut down, had operated a mining operation on the subject property. Mr. Morris stated that it was approximately two years.

Mr. Van De Wiele asked Mr. Morris how deep the mining operation would go to extract the limestone. Mr. Morris stated that it is typically two feet. Mr. Van De Wiele asked if

there was a limited lifespan of how long the strip mining could be performed. Mr. Morris stated that the permit is a perpetual permit, and there is a five year lease on the land but once the stone that is two feet or less is removed his company will not have any further use for the land. That is why as the excavating moves back on the lot the company will reclaim the land with dirt. The company is also required by DEQ permit to re-sod or seed the land to put vegetation back on the land.

Mr. Van De Wiele asked if the permit limits the company to a certain depth. Mr. Morris stated that it does because it is a surface mining permit.

Mr. Van De Wiele stated the Board has received several e-mails with concerns over heavy equipment, hammering and other things. Mr. Morris stated the company has no hammering equipment or heavy equipment. Mr. Morris stated that he has submitted pictures of the tractors and the flatbed Freightliner 450 truck used to remove the stone.

Mr. Van De Wiele asked Mr. Morris how the stone is removed out of the earth. Mr. Morris stated the stone is lifted with the forks of the tractor and the stone is lifted onto the bed of the truck. The truck hauls the stone to the job site and dumps it. There is no cracking, blasting or drilling for the stone.

Ms. Snyder asked if there would be any saws used for cutting. Mr. Morris stated there is some cutting but it will be limited in nature. Most of the sawing is performed on the construction site and not in the mining area.

Mr. White asked Mr. Morris if he was picking up just the loose boulders. Mr. Morris answered affirmatively. Mr. White asked Mr. Morris if a rock was embedded would he be doing something else to gain access to them. Mr. Morris stated no. The company is just picking them up and hauling them off.

Mr. Roby came forward to inform the Board that the bank has not owned the property for a long period of time, and did not have a lease with the previous operator because they owned the property. Once the bank took ownership of the property they engaged Creative Stone so prior activity was not part of this activity.

Ms. Snyder the application states mining by surface and stripping method so there is no mining activity at all. Mr. Morris stated the company does not have anything with a big shovel on it. There are artisans that locate boulders and stones they can use aesthetically in backyards and for walls in expensive homes. Most of the homes are in excess of \$500,000 that utilize these stones in their landscape designs. Cutting, blasting or any kind of shaping would ruin the character of the stone.

Mr. White asked Mr. Morris to address the subject of the noise and the dust. Mr. Morris stated that for the dust, the site is surrounded by agricultural land, and by vegetating the land as the stone is removed will keep the dust from becoming a problem. As for the noise factor, the only noise that will be heard will be the tractors. They are no louder than a farm implement. They are small tractors. The Freightliner is a diesel truck and

will be operated only during daylight hours. The vehicles will beep when they are backing up. Mr. Morris presented pictures of the equipment and of the subject property which Ms. Back displayed on the overhead projector.

Mr. Van De Wiele asked Mr. Morris what the condition of the land would be at the end of the five year lease. Mr. Morris stated it would be equivalent to pasture land. Mr. Van De Wiele asked if there would be any hindrance to residential development at that point. Mr. Morris stated no, and to build a residential development the stone would need to be removed or cover it.

Mr. Tidwell asked if there was a plan to remove the trees. Mr. Morris stated there is no plan to remove the trees.

Ms. Snyder asked Mr. Morris if he could estimate, in a timeline fashion, how much more limestone could be excavated. Mr. Morris stated that at the end of the five year lease it is anticipated that the stone will be at the end.

#### **Interested Parties:**

**Cathy Anthony**, 908 South 156<sup>th</sup> East Avenue, Tulsa, OK; stated her property has been in the family for 30 years. Her family has seen, heard, and smelled the mining from the previous company and from this company. She called the City of Tulsa and she was told the land could not be zoned for mining because there is no industrial zoning north of 4<sup>th</sup> Street due to the agricultural zoning. The only thing that separates her land from the subject area is pasture land. The subject property is heavily wooded. By taking the rock there will be trees that will be downed and there has been in the past. The area is a natural habitat with all kinds of creatures, including deer, coyotes, raccoons, armadillos, etc. The people in the area live there because they like the rural area and the quiet. There is a lot of noise with this mining, and Mr. Morris gives the Board impression that this is surface mining only but they dig into the ground which makes a lot of noise. Eleventh Street is undergoing a repaving and is closed to through traffic, and she does not think the new pavement is going to fare well with dump trucks driving on it several times a day with heavy loads. The neighbors have valid concerns. They do not want the area to be re-sod or seeded with no trees.

Mr. Van De Wiele asked Ms. Anthony to explain what she is seeing, hearing, and smelling in the mining operation. Ms. Anthony stated the neighbors can see the traffic; the pounding into the ground can be heard; the beeping of the vehicles backing up; and the air is very, very dusty.

**Marcia Clements**, 1815 West Easton Street, Tulsa, OK; stated she is representing All Tribes Community Church which is directly to the west of the subject property. The church owns approximately 19 acres and they object to the Special Exception to allow the surface and strip mining of the limestone. The church purchased the property approximately eight years ago. The land is pastoral and peaceful. Native Americans honor the elements, and stripping the land goes against everything they believe. Creative Stone Design exits right onto historic Route 66, which is currently a two lane

road. The church is about ten feet away from the subject property. They can see stacks of limestone that have been previously excavated. The Native Americans sit on the property, and they know there have been pieces of stone excavated that are as big as a car. That type of stone must come out of the ground by more than two feet deep. The subject property is in a neighborhood and next to a church. The church moved to their property because it is peaceful, full of nature and animals. The church has concerns over the trucks. The church has concerns over the destruction to Route 66. The church is concerned over the noise levels. The church is concerned about what living next to a strip mine will do the property values of the area.

Mr. Van De Wiele asked Ms. Clements how often the church uses the property. Ms. Clements stated the church meet on Sunday and sit under the trees amongst the rocks.

**Christy Boggs**, 1127 South 157<sup>th</sup> East Avenue, Tulsa, OK; stated she owns 4-1/4 acres and have done extensive landscaping, fencing and improvements to the property. She and her husband personally object to the request today. There are heavy large trucks and bobcats, and the beeping sounds they make carries for miles because there is not a lot to block the sound. She does not want to see the newly laid 11<sup>th</sup> Street tore up by heavy equipment. This is a rural area with a country feel and she does not want the added noise. The reason the rocks are laying around, or stacked, is because they are the rocks that were excavated by the previous owner. When she and her husband moved into their house they used the limestone rocks to landscape around their home, all the while improving the area. Rock is very expensive. One of the large boulders could run hundreds to thousands of dollars. The previous owner, that performed mining on the property, if he was fined even a thousand dollars one truckload would more than pay for the fines. She would suggest the current take the rock that is laying on the surface but no more digging, no more jack hammering. Just clean up the area where the land can be sold.

Mr. Van De Wiele stated that if someone were to buy the land and turn it into a neighborhood development, a lot of what is happening now would need to happen anyway. There would be a lot of trucks. There would be a lot of dust. There would be a lot of beeping from the vehicles. There would probably even be digging. Ms. Boggs stated there has to be comprises made to get rid of the rock. The comprise would be for the current owner would be to take six months, remove all the rock from the surface with no digging and then go away. The neighborhood does not want any mining of any sort to happen in the area.

Mr. White stated that based on the petitions and what Ms. Boggs is saying they want no mining in the area, and if it did happen they could live with a six month period. Ms. Boggs stated that was her personal opinion and to offer some kind of compromise.

Mr. Tidwell asked Ms. Boggs if she, and the neighborhood, would be against Creative Stone removing the rock that was mined by the previous company. Ms. Boggs the neighborhood would like to see surface rocks removed because the land is an eyesore now.



Mr. White asked Legal if, as far as definition, is picking up rock that is laying on the surface qualify as surface strip mining. Mr. Swiney stated that he would need to research that, but his personal opinion is that mining is digging something out of the ground not removing it from the surface.

**Jack Robertson**, 515 South 156<sup>th</sup> East Avenue, Tulsa, OK; stated the he has lived on this section of ground for 48 years. He also lives on the same vein of rock that Creative Stone is working on. The limestone that is seen on the surface is seen because of the natural erosion. The rock is deep. There is no such thing as going out there is just picking up the limestone from the surface because all the rock is stuck in the ground. The earth has the rock held in place naturally. If Creative Stone excavates rock and brings in soil to recover the surface, how much dirt are they going to need to haul in? That would be like building the Will Rogers Turnpike, the soil replacement would be a major undertaking. The bottom line is, if the land is sold for a residential development or a commercial development the rock is still there. All the surface soil is superficial and he knows that because he lives on that same rock vein. This tract is nothing special because it goes for miles and miles. Disrupting this surface will make the problem much worse for the neighborhood.

Ms. Snyder asked Mr. Robertson if most of the rocks are deeper than two feet. Mr. Robertson stated that he couldn't tell her how deep they are but they are 20 to 50 feet deep, but a Geologist could definitely tell how deep the vein runs.

Mr. Van De Wiele asked Mr. Robertson how close he is to the property. Mr. Robertson stated that he lives about a half mile, or less, from the subject property.

**Jim Mautino**, 14628 East 12<sup>th</sup> Street, Tulsa, OK; he had Ms. Back place a map on the overhead projector so he could show the Board where his house is located in relation to the subject property. The subject property is not unusual and there is nothing different about the property. When a person drives past the property you can see where there have been trees dislodged and rocks have been taken out of the ground and piled up. The property is a total mess. Creative Stone came in a few weeks ago, and when the trucks come in to load up if the gate is locked the truck will park on the street in a double striped area and on a hill so that a person cannot see the truck until they are right there. The subject property is a part of 160 acres that was taken to District Court and the judge ruled there will be no industrial past 4<sup>th</sup> Street. There is a 120 acre tract that is a distribution center nearby. The City of Tulsa installed a sewer and water line near the subject property for 70 acres that will eventually have houses built on it, and an outlet mall in close proximity to the subject property. Creative Stone has made a statement to the Board that they will clean up the property as they excavate, but they are not cleaning up the land because they have already been removing rocks. The rocks are scattered everywhere or piled up. Why are there piles of rocks, because those rocks are not large enough for their company need. It is for that reason the neighbors have no faith in the statement that the land will be cleaned up. There are plenty of houses around the subject property and within the 300 foot radius, so Creative Stone cannot

say they are in the country. If the Board is to approve this request what is to stop someone else from receiving a Special Exception a few yards down the road? He moved into his house in 1963 when the area was actually country, and the first thing he wanted was a well. He had a friend start digging the well and after 89 feet he was still digging through limestone. There is a lot of rock in the area and there will never be a sinkhole. When I-244 becomes bogged down with traffic and quits moving 11<sup>th</sup> Street becomes an access road to 193<sup>rd</sup> East Avenue. That traffic is moving at 50 miles per hour and is way too fast for the road and area. Mr. Mautino stated that he has been speaking with Paul Zachary of the City of Tulsa because there are no shoulders on the road, and when you mix that with high volume traffic and truck traffic entering or exiting from 11<sup>th</sup> Street it is dangerous.

**Mary Erb**, 15520 East 11<sup>th</sup> Street, Tulsa, OK; stated she owns all the property east of the subject property. She has cattle on her property and loves the area. Her family would like to see the area cleaned up because it is nasty.

**Carol Palmour**, 1126 South 157<sup>th</sup> East Avenue, Tulsa, OK; stated she lives on the corner of 11<sup>th</sup> Street and 157<sup>th</sup> East Avenue. Her neighbors have already stated what she wanted to say but she wants the Board to know she agrees with her neighbors. She does not want this request to be approved just like her neighbors.

**Rebuttal:**

Mr. Roby came forward and stated that it is true the bank does have the property for sale. The bank did not have any offers when Creative Stone came to the bank with their proposal. Creative Stone was aware of what had previously happened and offered a business proposal to remove the rock. The bank is not in the land development business. The bank wants to be a good neighbor and make sure the property is returned to a great estate. Mr. Mautino did mention the development of an outlet mall that is slated just to the west and north of the subject property, and the bank's hope is that it will come to fruition. The bank does not want to have this site on a long-term mining operation. It is the bank's hope that this operation can be carried out and return the land to normal for a potential developer.

Mr. Morris came forward to address the reclamation. The permitting process with the Department of Mines requires Creative Stone to post a bond so the property will be reclaimed according to the plan that was submitted which includes grading to level and returning vegetation to the site. Whatever the previous company did prior to Creative Stone, his company is not responsible for that. His company looked at the site and they are interested in the rock that has already been excavated. In June the City of Tulsa prohibited Creative Stone from entering the site so that is why there are weeds and whatever mess there is because the company was locked out of the site. Creative Stone never intended to leave the site as it sits but that is what happened.

Mr. Tidwell asked Mr. Morris if his company is currently working on the site. Mr. Morris stated his company has not been on the site since the end of June. Mr. Tidwell asked Mr. Morris what value the rock that is laying on the ground had to his company. Mr.

Morris stated that it depends on the project and how the rock looks. There is value to them, but a lot of the rock that is too small will be leveled out with the dirt when the site is graded. The current permit that Creative Stone has with the Department of Mines has a staging site which is not the front of the property, it is in the middle of the property and that is where the waste is deposited until the final grading of the reclamation.

Mr. White asked Mr. Morris if the reclamation would require the company to haul in dirt. Mr. Morris stated that is not necessarily true, because dirt is exposed as the rock is pulled from the earth. Mr. White stated that rock takes up significant volume so there will be a depression left. Mr. Morris stated that the way the rock is currently being removed is that it is being removed from one area and taken toward the rear of the property so there would not be a large depression. The area of the rock removal would be lower than the current elevation but there will not be dirt hauled in to bring the ground back up the two foot level. The ground will be smoothed but not necessarily level.

Mr. Van De Wiele asked Mr. Morris if what was pulling from the ground is what the previous owner came and broke up, or are these natural boulders that occurred. Mr. Morris stated that he could not answer that definitively, all he knows is that the previous owner did go in with a large track hoe which his company will not do because they do not own a track hoe. The equipment that Creative Stone will use is only capable of removing the stone that is on or near the surface, within the two feet. MR. Van De Wiele asked Mr. Morris if what his company is removing is which the previous operation mined. Mr. Morris stated that a lot of it is.

Ms. Snyder asked Mr. Morris if his company was splitting or cutting the rock. Mr. Morris stated that his company does not have the equipment that would excavate rock the size of a car, so no his company would not be. His company would only be removing stone that is smaller than a car.

Mr. Tidwell asked Mr. Morris what would the hours of operation be for the company. Mr. Morris stated the hours of operation would be daylight hours. Normally the company works a ten hour day in the summer and a six hour day in the winter, six days a week.

**Comments and Questions:**

Mr. White stated he has significant history with the area from previous cases. Approximately three-quarters of a mile west of the subject property there is a concrete batch plant that was created by spot zoning. It was to be a temporary business, and that grew into a nightmare. The dust problem and pollution of the creek. Several subsequent issues did come before the Board of Adjustment, and the Board attempted to control it as best as they could. This is one of the few times that Councilor Mautino and Mr. White agreed on an issue. It became an abomination and became a legal issue. Mr. White states he foresees this request to become similar to the concrete batch plant and cannot support the request.

Mr. Tidwell stated that hearing both sides of the case he completely understands what is going on and he cannot support the request. He does not think it is right for the neighborhood.

Mr. Van De Wiele stated that overall he would agree with Mr. Tidwell if this request were a lifetime operation. Someone has created a mess on the subject property such that it is never going to be cleaned up. It is probably not this Board's job to grant approvals to fix someone else's problem, but from the aerial given to the Board some those piles of rock will be in place forever if someone does not dispose of them by hauling them off or selling them. He does not think this is correct place for a business and he would not support this for a long term solution.

Ms. Snyder stated she is not in support of this request because it is not right for the area or the neighbors. She does think it would be nice to be rid of the rocks on the subject property but she agrees with Mr. White this might lead to something that was not intended.

Ms. Snyder asked Mr. Swiney if had found a definition for mining in the code. Mr. Swiney stated the word mining is not defined in the definition section of the code and the Board is left with the general understanding of the word mine. It is usually taking something from underground. The company has submitted itself to the Department of Mines which would indicate they believe they are in the mining realm. If someone were to develop the land the clean up process would be part of that development process. The stone that is sitting on the surface is not harmful or nuisance, so there is no need for a clean up.

**Board Action:**

On **MOTION** of **SNYDER**, the Board voted 4-0-1 (Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; Henke "abstaining"; none absent) to **DENY** the request for a Special Exception to allow for mining limestone by surface and stripping methods (Use Unit 24) in an AG district (Section 301); for the following property:

**E/2 SE SW SEC 3 19 14 20.00ACS, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

**Mr. Henke re-entered the meeting at 3:19 P.M.**

**21638—Norman & Kathryn Hodges**

**Action Requested:**

Variance to allow more than 30% coverage in the required rear yard (473 square feet) in an RS-3 District (Section 210.B.5.a); Variance to allow 1,186 square feet (68%) of floor area for a detached accessory building (Section 402.B.1.d).

**LOCATION: 1422 South Quebec Avenue East (CD 4)**

**Presentation:**

**Norman Hodges**, 1422 South Quaker, Tulsa, OK; stated he has lived on the property for 30 years. His hobby is antique cars, and has been for most of the 30 years. During most of that time the hobby has been done in the driveway. His neighbors are exceptional and have allowed him to have this hobby without any objections. He is requesting the Variance to add eight feet on the rear of his garage so he can park the vehicles he owns in the garage and not leave them in the weather.

Ms. Snyder asked Mr. Hodges why he needed the extra height. Mr. Hodges stated the reason for the extra height is for storage of the auto parts, i.e., fenders and hoods.

**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) based upon the facts in this matter as they presently exist to **APPROVE** the request for a Variance to allow more than 30% coverage in the required rear yard (473 square feet) in an RS-3 District (Section 210.B.5.a); Variance to allow 1,186 square feet (68%) of floor area for a detached accessory building (Section 402.B.1.d), subject to conceptual plan 8.7. Finding that the proposed addition to the existing structure will be a non-commercial addition and will be for the purposes of vehicular storage, and the addition does not extend as far west as the existing storage building the property. 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 5 BLK 3, ELECTA HGTS ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

**21639—Jose G. Rodriguez**

**Action Requested:**

Variance from maximum allowable floor space for a detached accessory building from 500 square feet to 1,615 square feet in an RS-3 District (Section 402.B.1.d); Variance to allow 1,615 square foot accessory building in an RS-3 District with a top

plate height of 14 feet and exceeds 20 feet in height (Section 210.B.5.a).  
**LOCATION:** 2301 North Lewis Place East (CD 3)

**Presentation:**

**Maria Puente**, 1038 North Quaker Avenue, Tulsa, OK; stated she will be acting as interpreter for Mr. Rodriguez. Mr. Rodriguez proposes to keep the building just as it is.

Mr. Henke stated that it looks like the building that is going in the back and it will be larger than the house. Mr. Henke asked what the use of the building was to be. The building is going to be used for tool storage and wood storage because Mr. Rodriguez works in construction. Mr. Henke asked what type of tools are to be stored in the building. There would be trailers, tractors, and tools used in the contracting trade.

Mr. Van De Wiele asked if Mr. Rodriguez had his own contracting or construction company. Ms. Puente stated that Mr. Rodriguez did have his own contracting company.

Mr. Back stated that she had specifically asked this question at the intake of the application, if he was in business for himself or if he worked for other people. Therefore, the Board might want to ask more specific questions.

Mr. Tidwell asked if Mr. Rodriguez worked for himself. Ms. Puente stated that Mr. Rodriguez has his own company and does work for himself.

Mr. Henke asked Ms. Back if that was the answer she had received or if she had been told something different. Ms. Back stated that she understood that it was not his company equipment that would be stored on his property but that it was his personal equipment because he is in the construction business, and he needed the equipment to be hired by other people. She thought she had asked the question clearly enough to make sure that he was not storing business equipment on his personal property. Mr. Henke stated that he understood because otherwise he would be operating a business out of his house. Ms. Back agreed because there is not a home occupation application.

Mr. Henke stated that there is a problem with the application as it is advertised today. There are several alternatives, Mr. Rodriguez can withdraw the case and find another place that is properly zoned to store the tools. He can file a new application to have a home occupation for operating a business in a RS-3 zoned property and the building would need to come down. If he files an application for a home occupation and that is pending, and if the Board were to approve it. Ms. Snyder and Mr. Van De Wiele stated that it still would not be a home occupation.

**Mr. White left the meeting at 3:26 P.M.**

Ms. Back stated that as another option the applicant can continue the case and add the home occupation onto the existing application. Mr. Henke agreed that was correct

because the applicant is still going to need relief for the building. Mr. White stated that the building already exists. Mr. Henke stated that is correct but the applicant has not been granted relief for the variance. Mr. Henke stated that once the Board addresses the issues depending on the resolutions before the Board, the building will either go away or it stays. Mr. White stated the building could stay without the business being in it. Mr. Henke stated that the question before the Board is whether to grant or not to grant a Variance for the size of the building.

Ms. Miller stated that she and Mr. Swiney are discussing home occupation. Even if Mr. Rodriguez is in business for himself he doesn't operate the business out of that location, but just stores the equipment. Mr. Henke stated that Mr. Rodriguez still needs the relief. Ms. Miller stated the relief would be for the size of the building.

### **Mr. White re-entered the meeting at 3:28 P.M.**

Ms. Back stated that if Mr. Rodriguez operates the business out of the property, take telephone calls at the house, or booking construction projects needs to be clarified so he can seek the relief he truly needs. Mr. Henke asked Ms. Back to obtain that clarification between today and the next Board meeting. Ms. Back stated that if the case is continued and must be advertised for more relief there would not be enough time to readvertise for the October 22<sup>nd</sup> meeting. The continuation may need to be November 12<sup>th</sup> unless the applicant does not need the relief.

Mr. Henke stated the question has been asked and answered he is running a business out of 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, Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) based upon the facts in this matter as they presently exist to **CONTINUE** the request for a Variance from maximum allowable floor space for a detached accessory building from 500 square feet to 1,615 square feet in an RS-3 District (Section 402.B.1.d); Variance to allow 1,615 square foot accessory building in an RS-3 District with a top plate height of 14 feet and exceeds 20 feet in height (Section 210.B.5.a) to the Board of Adjustment meeting on October 22, 2013; for the following property:

**Lots 19 & 20, TULSA HGTS, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

**21640—Adriene Wherry**

**Action Requested:**

Variance of the building setback from the centerline of East 36<sup>th</sup> Street North from 100 feet to 89 feet to permit an addition (Section 703). **LOCATION:** 911 East 36<sup>th</sup> Street North **(CD 1)**

**Presentation:**

**Lou Reynolds**, 2727 East 21<sup>st</sup> Street, Tulsa, OK; stated Adriene Wherry and her husband operate the Quick Stop on 36<sup>th</sup> Street North and Lansing and have added approximately 400 square foot addition onto the existing convenience store. After it was completed and had some issues with permitting they realized they had built the addition over the setback line. Mr. Reynolds presented a series of pictures of the subject building on the overhead projector. The hardship is that they have added onto an existing structure that was in existence before the zoning code was enacted.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **SNYDER**, 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 the building setback from the centerline of East 36<sup>th</sup> Street North from 100 feet to 89 feet to permit an addition (Section 703). Finding that the original building was grandfathered in and the new addition is in line with the grandfathered in building. 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:

**BEG SECR W/2 SE SW SE TH N500 E160 SWLY TO PT 110E POB TH W110 POB LESS S50 THEREOF FOR RD SEC 13 20 12 1.42AC, and LT 11 BLK 11, CHANDLER-FRATES FIFTH ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**



**21643—CBC Builds, LLC**

**Action Requested:**

Minor Special Exception to reduce the required front yard from 30 feet to 25 feet to permit a residence (Section 403.A, Table 3). **LOCATION:** 3127 East 26<sup>th</sup> Street (CD 4)

**Presentation:**

The applicant was not present. The Board decided to move this item 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.

\* \* \* \* \*

**OTHER BUSINESS**

Review and approval of the 2014 meeting dates for the City Board of Adjustment.

**Board Action:**

On **MOTION** of **VAN DE WIELE**, the Board voted 5-0-0 (Henke, Snyder, Van De Wiele, White “aye”; no “nays”; no “abstentions”; none absent) based upon the facts in this matter as they presently exist, the Board **APPROVE** the 2014 City Board of Adjustment meeting dates calendar.

\* \* \* \* \*

**NEW BUSINESS**

**21643—CBC Builds, LLC**

**Action Requested:**

Minor Special Exception to reduce the required front yard from 30 feet to 25 feet to permit a residence (Section 403.A, Table 3). **LOCATION:** 3127 East 26<sup>th</sup> Street (CD 4)

**Presentation:**

The applicant was not present. The Board chose to act upon the case.

**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, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) based upon the facts in this matter as they presently exist, the Board **APPROVE** the request Minor Special Exception to reduce the required front yard from 30 feet to 25 feet to permit a residence (Section 403.A, Table 3), subject to per plan 13.7 and 13.8. 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 BEING IN THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 19 NORTH, RANGE 13 EAST, CITY OF TULSA , TULSA COUNTY STATE OF OKLAHOMA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 17; THENCE NORTH 88°44'30" EAST ALONG THE SOUTH LINE OF SAID NORTHEAST QUARTER FOR A DISTANCE OF 228.91 FEET; THENCE NORTH 01°15'30" WEST PERPENDICULAR TO SAID SOUTH LINE FOR A DISTANCE OF 30.00 FEET, TO THE POINT OF BEGINNING; THENCE NORTH 01°27'42 " WEST FOR A DISTANCE OF 120.00 FEET; THENCE NORTH 88°44'30" EAST, FOR A DISTANCE OF 84.90 FEET; THENCE SOUTH 01°27'42 " EAST FOR A DISTANCE OF 120.00 FEET; THENCE SOUTH 88°44'30" WEST PARALLEL TO AND 30.00 FEET NORTH OF THE SOUTH LINE OF SAID NORTHEAST QUARTER FOR A DISTANCE OF 84.90 FEET, TO THE POINT OF BEGINNING; SAID TRACT CONTAINS 10,188 SQUARE FEET OR 0.234 ACRES, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

\*\*\*\*\*.

**OTHER BUSINESS**

**REQUEST FOR INTERPRETATION – Ice Shack:**

Requested by Yuen Ho, Building Official, Development Services, City of Tulsa

Pursuant to Section 1601 of the Tulsa Zoning Code (TZC), I respectfully request an interpretation from the Board whether structure setback is applicable to this structure (please see attached sketch and picture). This structure is presented as a vending machine and not a building. This request is not site-specific, although the context regards setback from the centerline of a right of way. The discussion encompasses the nuances of the following definitions:

**BUILDING:** A structure which is permanently affixed to the land, and has one or more floors and a roof, and is bounded by either another building with a common party wall, open air, or the lot lines of a lot.

**BUILDING SETBACK:** The horizontal distance, from the point of measurement, such as the centerline of an abutting street or the boundary line of an abutting zoning district to the nearest building wall.

**SETBACK:** A horizontal distance determining the location of a building with respect to a street, use district boundary line, or another use. Where the term "setback" is used in conjunction with a modifying word or words such as "parking area", the setback shall in its application include, but not be limited to, buildings.

**STRUCTURE:** Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground, and includes buildings, parking areas, walks, fences, and signs.

In the application of a setback requirement, Development Services has historically interpreted along the lines of whether the structure/building has walls. For instance, a fueling canopy at a gas station has no walls, and therefore a setback cannot be determined for that structure. The question concerning this ice shack (though a structure by definition) is whether it is a building subject to setback, or whether it is an equipment/vending machine not subject to setback. The shack does not accommodate any human entry and human occupancy within. It is hooked to plumbing and power, and requires a building permit under the International Building Code, and is therefore required to be affixed to a permanent foundation on location.

**Presentation:**

**Yuen Ho**, Building Official Development Services, City of Tulsa, 175 East 2<sup>nd</sup> Street, Tulsa, OK; stated this request is due to the code not being clear on the type of subject structure. The subject structure is affixed to the ground and fits the definition for a building. The structure has been proposed to be more like a vending machine because no one enters into the structure. It is not occupied space. He is before the Board to see if the structure is a building subject to setback requirements, or is it a non-structured structure and the setback does not pertain to the subject structure.

Mr. Van De Wiele asked Mr. Ho if the Board is to say this is not a building can it be placed right at the property line? Mr. Ho answered affirmatively. This is not without precedent because, as he cited, there are gas station canopies. Those canopies are not subject to a setback because a setback measurement is defined as "back to the

building wall”, and there is no reference point with a canopy. With the subject structure there are walls of the structure or vending machine.

Mr. Van De Wiele asked if placement of the structure would still subject to review by the permit office. Mr. Ho answered affirmatively. The City is looking at this as a stand-alone structure. A vending machine, like he is familiar with, is inside a building.

Normally a person will see a video box structure outside of a pharmacy door where videos can be checked out, but this is a structure that is going to sit out by itself away from a building. The City is going to require a building permit because there is no exemption in the building code and it will be subject to a building review.

Ms. Snyder asked Mr. Ho if the City will still be able to direct where the structure can be placed so it will not be blocking a person’s vision. Mr. Ho stated to a certain extent the City will be able to do that.

**Aaron Henson**, 5601 East 94<sup>th</sup> Street, Tulsa, OK; stated there is a product, Ice House America, on the market that has a structure the size of a big trailer. What he has is relatively small. The dimensions are 4'-0" x 7'-0" x 5'-0" x 5'-0" x 8'-0" tall which is a small footprint. It will take approximately 20% of the parking space that it will sit in. It will be placed back far enough so that sight lines will not be obstructed or cause any harm when a person is pulling out of a spot. The structure is listed as a vending machine with the NAMA, which certifies Coke machines. The structure is also certified with InnerTech with a UL541 rating as a vending machine. The Oklahoma Tax Commission also considers the structure to be a vending machine.

Mr. Swiney ask Mr. Henson if the machine made the ice at the site it is placed. Mr. Henson stated that it does. The machine is self-contained. All that is required is an electrical hook up and a water hook up.

Mr. Van De Wiele asked Mr. Henson if the machine looks just like the picture that he has displayed on the overhead projector. Mr. Henson stated that it does and about four men can pick up the structure and move it very quickly, or lift it with a forklift, after disconnecting the electrical power and water.

Mr. Van De Wiele stated that he had to leave the meeting for a previous business engagement, but his thought this is not a structure but more like a vending machine.

**Mr. Van De Wiele left the meeting at 3:51 P.M.**

Mr. White stated that the Board has previously approved a similar machine on the southwest corner of 21<sup>st</sup> and Sheridan, but that machine did not make the ice. The relief requested in that case was the setback from 21<sup>st</sup> Street because the machine was occupying a parking spot. Mr. Henson came forward, he informed the Board that he

had looked at that machine, and checked on the square footage and the number of parking spots the machine occupies but it is a totally different type of machine. The Ice House America machine is roughly 200 square feet, it has three-phase power, a person can enter into the machine, it has a sink, and it takes a crane to deliver the machine to the site. The Kooler Ice, his machine, is a much smaller unit and is just a plug-in type machine.

**Paul Enix**, Senior Code Official, City of Tulsa, 175 East 2<sup>nd</sup> Street, Tulsa, OK; stated the question that the City wants to clarify is the setback. Everyone agrees the machine is not a building but the City has two choices. Does the City use the structure setback, like they would for canopy measuring to the post, or we use the building setback which is measured to the building wall. If the building setback is used the machine would have to come back 100 feet from the centerline of the street. If the structure setback is used the machine would have to be on its own property or out of the right-of-way. The City is asking the Board to define the question in this manner to determine what rules to utilize and where the structure goes.

Mr. Tidwell stated that since the Board does not think this is a building he would think the structure setback would be used. Mr. Henke, Mr. White and Ms. Snyder agreed.

**Board Action:**

The Board (Henke, Snyder, Tidwell, White) members concurred. The City should use the structure setback and not the building setback.

**REQUEST FOR INTERPRETATION – Main Event:**

**Requested by Yuen Ho, Building Official, Development Services, City of Tulsa**

Pursuant to Section 1606.B of the Tulsa Zoning Code (TZC), I respectfully request determination of the use unit(s) classification for the following proposed building venue. A copy of the approximate square footage and a prototypical plan is attached for context and guidance, showing square feet area, and floor plan layout. For the purpose of purely determining the appropriate use unit classification(s), the proposed venue is neither site-specific nor zoning district-specific at this time. The Board may choose to be site-specific and district specific per Section 1606.B.

The advertised attractions for such a venue feature a restaurant, a full service bar, party rooms, meeting rooms, as well as entertainment choices such as billiards, laser tag, video arcade, and bowling. This assortment of uses may be individually tagged for the various uses in:

**Use Unit 12:** Principal Use Restaurant; accessory bar occupying not more than 25% floor area of restaurant/bar combined (See definition in TZC)

**Use Unit 12A:** Bar/Tavern; on-premises consumption of beer/alcohol open to the general public (see definition in TZC)

**Use Unit 12A:** Billiard Hall/Billiard Parlor/Pool Hall; on-premises consumption of beer/alcohol open to the general public (see definition in TZC)

**Use Unit 19:** Family Billiard Center; no serving of beer or alcoholic beverages (see definition in TZC)

**Use Unit 19:** Bowling Alley\*

**Use Unit 19:** Video Games

**Use Unit 19:** Enclosed Commercial Recreation Establishments NEC

**\*Footnote to Use Unit 19** states that an accessory use bar customarily incidental and subordinate to [only] a principal use hotel or motel (both Use Unit 19) is included. In the 1980 TZC, Nightclub and Tavern, and Bowling Alley, were all UU 19. In 1984 Nightclub and Tavern were moved to UU 12 and Bar was added also. Bowling Alley remained in UU19 as today. The City inherited existing bowling alleys with a customary bar, and by customary precedent, bowling alleys may be approved with an accessory bar, in spite of the footnote limiting accessory bars to hotels and motels within this Use Unit 19. UU 12A Adult Entertainment Establishment was added to the TZC in 1993. In 1996, “non-intoxicating beverages” was replaced by “low-point beer” and included in 12A, along with revisions in the definition to delete “non-intoxicating beverages” and to include low-point beer, accessory use bar, beer bar, [family] billiard center, billiard hall/pool hall, and night club.

As with most any establishments, there are customary office spaces, restrooms, support spaces, and general circulation areas for the function of the facility. These are not assigned a use unit because they are truly support and incidental spaces to the facility.

The proposed venue proclaims a business model that the facility is primarily a restaurant, and all else is ancillary attraction to create a family entertainment destination. It is also proposed that since the TZC currently does not have any other use unit designation for such a combination of identified uses within a single building, then the best use unit designation that will capture all of it under a single roof would be a single classification under Use Unit 19 Enclosed Recreation Establishment NEC. However, Development Services has never interpreted any Use Unit 19 to permit on-premises consumption of beer and alcoholic beverages unless it is a motel or hotel, or a bowling alley/bar code evolution. In examining this prototypical floor plan layout, it does not appear that the bar is solely accessory to the bowling alley. The combination of the bar with the restaurant and billiard uses presented several possibilities which include a 12A designation where permissible. (Bar and restaurant floor area ratio does not support a principal use restaurant with accessory bar.) A family billiard center does not permit serving of beer or alcoholic beverages; it is also not customary in a family video arcade [or family laser tag venue]. Development Services seek an open discussion and determination of the appropriate use unit classification(s) for such a business model to better establish the direction needed for further zoning compliance. However, since all the component uses are indeed classified, the facility may be a multi-use facility with

all use units properly identified. We seek the Board's interpretation whether this is a single UU19 Enclosed Commercial Recreation Establishment NEC; or multi-use UU12, 12A, 19 and 19NEC; or even a single UU12 all other uses being ancillary.

**Yuen Ho**, Building Official Development Services, City of Tulsa, 175 East 2<sup>nd</sup> Street, Tulsa, OK; stated this request for interpretation is for a proposed building which is advertised as an entertainment venue. It is following a lot of new business models in that it has engulfed a lot of different entertainment options under one single roof. The City is attempting to find out what is the proper way to classify the use that is presented in the building where there is a mix of different types of uses. The zoning code, as it is written, does not give a combination of all possible use units in a building. In fact, the code has identified each use unit into very discreet and separate use units. Use Unit 19, for example, there also different types in the line item use unit. Use Unit 12 states it is a principal use restaurant. Use Unit 12a is specifically for an entertainment establishment, and inside of 12a there are separate line items for a bar or tavern, a billiard parlor, and a pool hall. That is very important distinction because a family billiard parlor is classified as Use Unit 19. It is not permitted to serve alcohol in a family billiard parlor. Also under Use Unit 19 there is bowling alley and video games. This facility does present a laser tag option and that is not classified in the zoning code because it is a new invention. There is a laser tag facility within the City of Tulsa which the City has classified as Use Unit 19 not elsewhere classified (NEC), which is another line item under Use Unit 19. The City is requesting a determination of the proper use units within the building. It is not site specific. The reason for that is because there is a proposed bar within the facility and a combination of a bar with a family billiard parlor. The City cannot deal with this as far as liquor licensing, but the City can look at the bar as being an accessory to a restaurant function but there is still the family billiard parlor right next to it in the building. Mr. Ho stated that when he requested this interpretation he attached two references, one for generic floor plan and the other is tabulation of square footages.

Mr. Swiney reminded the Board this is an abstract discussion. This is speaking about generalities and not case specific for this particular use unit.

Mr. Ho asked if the City could classify the building under Use Unit 19 NEC. The City did not choose to place the building under a single classification because there are classified uses for the rest of the proposed uses within the building and this is a new business model. In a strip center the tenant has a space with a separation wall from the next business, but more and more there are new business models generated that needs clarifying. With all the uses under one roof does it compel the City to categorize this occupancy as a Use Unit 19 NEC.

**Lou Reynolds**, 2727 East 21<sup>st</sup> Street, Tulsa, OK; stated there are different ways of doing business. There is 15,600 square feet of bowling. There is 15,400 square feet of games, arcades, laser tag, climbing walls, ropes course, and all kinds of entertainment that is not typical. There is 1,700 square feet for a billiard area. There is also a restaurant and bar which approximately 13,300 square feet. In gross revenue

approximately 7% is generated by the bowling and games; approximately 30% is generated by food and drink, and drink is approximately 10% of that total. There is not a driver in any compelling way because everything is very much related. People come to bowl and stay to eat. This is not a restaurant. This is not a bowling alley. This is not an arcade. This is not a pool hall. This is not a bar. This is a blend of all things. It is the jumble of these uses that pushes the Use Unit 19 NEC concept. This is an interesting business with an expected 400,000 visitors per year.

**Walt Lovell**, Vice President of Development for Main Event Entertainment, 6652 Pinecrest Drive, Plano, TX; Main Event Entertainment is a Dallas based company that builds and operates entertainment centers. There are currently 12 entertainment centers in the United States with another one currently under construction in Tempe, AZ. Family entertainment is a category that appeals to a wide demographic because it is low cost leisure with multiple venues. There will be different clientele all during the day, i.e., on Saturday morning there will be a lot of families. There are birthday parties for children with a lot of events going on that are family oriented. Toward evening there will be young adults in the establishment. The mainline for advertising is "Eat, Bowl, Play". There is food served throughout the building with three different food types. There is sit-down dining similar to an Applebee's or Chili's; a café where an order can be placed; and there are a lot of banquets or events held on the premises. There are waiters for the bowling area so people can order food or drinks while they bowl. There is also a small bar area. This not a league house; the company does not cater to bowling and there are no sanctioned leagues. On some nights a large component of the customers are teenagers. There is amusement games and arcade games, billiards, a ropes course, a laser tag arena with other areas. The bar is approximately 710 square feet, or 1.2% of the building space. The food and service area is about 14,000 square feet. The rest of the building, including the offices, is about 42,900 square feet.

Mr. Henke stated that he would classify this proposal as an enclosed recreation facility and this discussion as an interpretation not a specific case. Mr. Swiney stated that he sees this interpretation as a discussion between the Board and staff to inquire into cases like this proposal, perhaps a trend of cases that may come before the Board of Adjustment.

Mr. Ho came forward and stated if the Board decides to classify this proposal as a Use Unit 19 NEC what will be done with the bar that serves alcoholic beverages?

Mr. Reynolds came forward and stated Mr. Ho's question was answered. The use unit does not outcome the determinacy of the alcohol. The accessory uses under all the commercial zoning districts have allowed Use Unit 19 by right. Under every section of accessory uses, accessory uses are allowed by right. This bar is clearly an accessory to this commercial venue.

**Paul Enix**, Senior Code Official, City of Tulsa, 175 East 2<sup>nd</sup> Street, Tulsa, OK; stated in regards to the alcohol licensing, the City came before the Board a few months ago to discuss alcohol licensing for nail salons. The Board was very cautious and thoroughly



looked at that venue before making a ruling, and gave the City a little leeway for an accessory. That is one of the reasons this is brought before the Board today because the City wanted to make sure this had been considered and approved by the Board.

Ms. Snyder asked Mr. Enix if he thought the Use Unit 19 NEC would give the City what they needed to issue a Certificate of Occupancy. Mr. Enix stated that if the Use Unit 19 is used he authorized specifically for the hotel or motel, and by customary the bowling alley which originally the bar and the bowling alley were the same use unit. What complicates this proposal is the billiard parlor. Is it family billiards or is it a pool hall?

Mr. Ho came forward and stated that the prototype floor plan shows the bar to be right next to the billiards area. The City is grappling with this type of issue. If it is classified as a Use Unit 19, which does contain a family billiard center and by definition is not allowed to serve alcoholic beverages, then where is it placed if it is said to be a single Use Unit 19 NEC, or should it be a multi use unit facility?

Mr. Reynolds came forward and stated the facility is all under one roof, it is all one owner. It is not a multi use but a single use. It is an entertainment center that is not elsewhere classified. There is nothing in Use Unit 19 that says there cannot be a bar, that phrase was put there for convenience. In this situation it is clear that this is not a bar, it is not a restaurant, nor is it a bowling alley. This business is something else, embedded to have a bar by accessory use under corridor zoning. This should fall under the single use of the code's entertainment facility NEC, which is the least intensive.

At this point in the meeting a powerpoint presentation of approximately three minutes of the proposed business was shown to the Board.

Mr. Lovell came forward and stated the hours of operation vary. On weekends, Friday and Saturday, the business is typically open until 2:00 A.M., and during the week if it is busy the business could be open until 1:00 A.M. On Saturday the business usually opens at 9:00 A.M. and during the week it typically opens around 11:00 A.M.

Ms. Snyder asked Mr. Lovell if the company was coming to Tulsa. He stated the company does have an option on ground in Tulsa.

**Board Action:**

The Board (Henke, Snyder, Tidwell, White) members concurred that this particular business model is an entertainment center Use Unit 19 not elsewhere classified with an accessory bar which is customarily incidental and subordinate to a principal use included in this unit.

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**NEW BUSINESS**

None.

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**BOARD MEMBER COMMENTS**

None.

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There being no further business, the meeting adjourned at 4:28 p.m.

Date approved: 10/22/13  
Frank X. H. W.  
Chair