

BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1105
Tuesday, November 12, 2013, 1:00 p.m.
Tulsa City Council Chambers
One Technology Center
175 East 2nd Street

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	OTHERS PRESENT
Henke, Chair Snyder Tidwell, Secretary White, Vice Chair	Van De Wiele	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, November 7, 2013, at 10:22 a.m., as well as at the Office of INCOG, 2 West Second Street, Suite 800.

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

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

Mr. Henke 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. Henke asked if there were any applicants present that would like to continue their case to the next meeting. Mr. Nathan Cross requested a continuance.

MINUTES

On **MOTION** of **WHITE**, the Board voted 3-0-1 (Henke, Snyder, White "aye"; no "nays"; Tidwell "abstaining"; Van De Wiele absent) to **APPROVE** the **Minutes** of the October 22, 2013 Board of Adjustment meeting (No. 1104).

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NEW BUSINESS

21653—Nathan Cross

Action Requested:

Variance of off-street parking requirements of 56 total spaces for all three retail spaces to 11 total spaces to accommodate a restaurant concept in the 3,450 square foot space formerly occupied by Ciao Restaurant (Section 1212.d and Section 1214.d). **LOCATION:** 3302 – 3310 South Peoria Avenue East (**CD 9**)

Presentation:

Nathan Cross, 502 East 6th Street, Tulsa, OK; stated he would like to request a continuance to the next meeting for this case, because his client is ill and not able to attend today's meeting and he would prefer to have a full Board hear the case.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **TIDWELL**, the Board voted 4-0-0 (Henke, Snyder, Tidwell, White "aye"; no "nays"; no "abstentions"; Van De Wiele absent) to **CONTINUE** the request for a Variance of off-street parking requirements of 56 total spaces for all three retail spaces to 11 total spaces to accommodate a restaurant concept in the 3,450 square foot space formerly occupied by Ciao Restaurant (Section 1212.d and Section 1214.d) to the Board of Adjustment meeting on December 10, 2013; for the following property:

W115 LT 1 & PRT VAC ST BEG NWC LT 1 TH N20 E TO PT SW TO PT W115 POB BLK 5, BROOKSIDE ADDN AMD, CROW CREEK OFFICE PARK RSB L2-4&9&PTL5-8&18B5 BROOKSIDE, PEBBLES ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

Board Action:

On **MOTION** of **TIDWELL**, the Board voted 4-0-0 (Henke, Snyder, Tidwell, White "aye"; no "nays"; no "abstentions"; Van De Wiele absent) to amend the previous motion and

CONTINUE the request for a Variance of off-street parking requirements of 56 total spaces for all three retail spaces to 11 total spaces to accommodate a restaurant concept in the 3,450 square foot space formerly occupied by Ciao Restaurant (Section 1212.d and Section 1214.d) to the Board of Adjustment meeting on November 26, 2013; for the following property:

W115 LT 1 & PRT VAC ST BEG NWC LT 1 TH N20 E TO PT SW TO PT W115 POB BLK 5, BROOKSIDE ADDN AMD, CROW CREEK OFFICE PARK RSB L2-4&9&PTL5-8&18B5 BROOKSIDE, PEBBLES ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

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UNFINISHED BUSINESS

21642—John W. Moody

Action Requested:

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

Presentation:

John Moody, 6004 South Marion Avenue, Tulsa, OK; stated he is representing Derksen Portable Buildings and Richard Gardner who is the owner of the subject property. Derksen Portable Buildings's headquarters is located in Kentucky but there is a plant located in Kellyville, Oklahoma. The subject property is zoned CS and abuts a commercial shopping center to the north. There is an older residential home abutting the eastern boundary of the subject property that is owned by Mr. Richard Gardner, and he has it up for sale. There is a Union School facility to the south of the subject property. His client intends to place ten portable buildings on the subject property for display purposes only, and one of those buildings will be utilized as an office for the sale of the portable buildings. The orders for the portable buildings are taken, then the building is built and shipped direct from the Kellyville plant. There will be a truck coming onto the subject property once or twice a month to rotate the display of the portable buildings. On the busiest day there would be two or three cars on the subject site.

Mr. Tidwell asked how many employees will be working at the subject site. Mr. Moody stated there would only be one employee on the site.

Ms. Snyder asked if there would be restroom facilities or trash facilities on site. Mr. Moody stated there would be trash for the office. Restrooms are not typically on site unless it is a port-a-john because it is not a permanent facility. This property is a larger commercial tract and is for sale, and the Derksen lease is subject to a six month notification to terminate the lease in the event there is a sale of the property.

Mr. White asked if there was any problem with the traffic turnouts that were depicted on a drawing provided to the Board. Mr. Moody stated that he attempted to determine the number of required parking spaces under the Tulsa zoning code, and it was conflicting. Under CS for portable sales it appears to be the same as a retail CS shopping facility which is entirely too much. Under the industrial provisions where portable building displays are allowed by right the spaces were very minimal. Therefore he guessed and proposed five parking spaces on the site which is more than will be needed. When he files for the zoning clearance permit he will let that department make a determination of the parking spaces required, then the cutouts will be installed. There is an existing 30 foot wide concrete curb cut. In answer to Mr. White's question Mr. Moody stated there are no problems with the cutouts.

Ms. Snyder asked Ms. Back if the area needed an all-weather hard surface because of the portable buildings. Ms. Back stated that she had spoke with Development Services and because there is little or no movement of the portable buildings a hard all-weather surface would not be required.

Mr. Tidwell asked Mr. Moody what the hours and days of operation would be for the company. Mr. Moody deferred to Mr. Les Reed.

Les Reed, 16028 West 65th Street, Sapulpa, OK; stated that typically he will be on the site two or three days a week for a few hours a day, but he is not on site eight hours a day five days a week. He relies on the signs and banners that are placed on the site for the customers to contact him regarding the portable buildings. A customer will call and set up an appointment, and he will meet the client on the site to discuss the building, write up a contract and leave.

Mr. White asked Mr. Reed if there will be a fence installed around the buildings. Mr. Reed stated there would not be a fence installed because the sites are unmanned and the company wants the public to be able to enter the property to look at the product at their leisure.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Snyder, Tidwell, White "aye"; no "nays"; no "abstentions"; Van De Wiele absent) to **APPROVE** the request for a Special Exception to permit Portable Storage Building Sales in a CS District (Section 701), subject to conceptual plan on 2.9 for the layout of the property, and conceptual plan 2.11 for the paved parking area to be installed. 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:

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

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:

Eric Mikel, 11400 North Sheridan Road, Collinsville, OK; stated he attempted to meet with the protestants from the last meeting but nothing was accomplished because he was told that they did not have time to discuss the issues. So he respected those wishes. He informed the Board that he had a petition in support of the charter school, that he had taken throughout the neighborhood, and he gave the petition to Ms. Back so it could become part of the official record.

Mr. White asked Mr. Mikel what is required of a charter school. Mr. Mikel stated that he had mislead the Board at the last meeting by stating the State required 100 students to attend the school. That figure was not from the State, that information was from the Fire Marshall stating that up to 100 students could be in the building attending school. At this point he deferred to Ms. Deborah Brown.

Mr. Henke stated that after looking at the petition from Mr. Mikel there are 51 neighbors signatures in support of the charter school.

Interested Parties:

Deborah Brown, 3001 North 24th West Avenue, Tulsa, OK; stated she has operated a charter school since 2000, and it was the first charter school approved in the City of Tulsa. Formerly that school was in the Northland Shopping Center but in 2006 the City of Tulsa evicted the school because the building was unsafe. Since that time the City Inspectors have been gracious enough to always inspect a building that was under consideration for relocation of a charter school. Before she went into negotiations with the subject property's owner, she contacted the Fire Marshall and Douglas Lewis inspected the building and told her what was needed for the building to become a charter school. The Fire Marshall also told her the second story of the subject building can not be used and access to the floor must be closed off. This building is currently owned by a former Fire Chief and State Legislator. A charter school allows educators to be entrepreneurs so they can utilize their personal methods. A charter school is governed by a Board, and the school must follow state law. The money follows the child, and that is how the staff is paid. The school must produce results otherwise the charter can be revoked. This program will be for four year old children only to prepare them for entry into kindergarten. In 2006 it was realized that four year old children must be provided a head start otherwise children will not be able to pass the state test. The school will not start with 100 children, but there will be a gradual progression of students.

Mr. Henke asked Ms. Brown the maximum number of students that would be attending the school at one time. Ms. Brown stated the maximum total number in the building is 100. Mr. Henke stated that he is interested on the traffic impact to the neighborhood and residents, so how many cars will there be? Ms. Brown stated generally the parents drop the children off without entering the building.

Mr. Tidwell asked Ms. Brown if the school operated on a year round basis or a nine month term. Ms. Brown stated the school is operated on a nine month term because the school follows the Tulsa Public School calendar. Mr. Tidwell asked the hours of operation for the charter school. Ms. Brown stated the hours would be 7:30 A.M. to 3:30 P.M., and the drop off times are staggered so everyone does not arrive at the same time.

Mr. White asked Ms. Brown if there would be any school buses involved in the transporting of children. Ms. Brown stated there would not be any school buses involved. The parents must show they are interested in their children attending the charter school by personally dropping their children off.

Mr. White asked Ms. Brown if the program was an all day program. Ms. Brown answered affirmatively. Mr. White asked if there would be any half day programs. Ms. Brown answered there would be no half days.

Ms. Brown stated the building is in close proximity to Langston, who is the sponsor of the charter school. Carver Elementary is approximately two blocks east of the subject site. Paradise Church is about a block away and they have a private school on site.

Because of these facilities it was thought the subject building would be an excellent location for a charter school.

Ms. Snyder asked Ms. Brown if there was parking for the parents to use while dropping off their children. Ms. Brown stated the teachers stand outside while the parents drop off their children, and the teachers escort the children into the building.

Mr. Henke asked Ms. Brown what her lease term is. Ms. Brown stated the lease is for a three year period but the owner has been generous and is going to donate the building to the charter school if everything is approved.

Eugene Rhodes, 440 East Latimer Place, Tulsa, OK; Ms. Rhodes stated that Mr. Mikel showed up Saturday without prior notice, and we could not meet him at that time. She stated that she also has a petition signed by the neighbors in opposition to the charter school. She thinks Mr. Mikel was misleading people to have them sign his petition. Several people that signed his petition also signed her petition because they become confused over the issue. Most everyone on her street, Latimer Place, was never approached by Mr. Mikel but he did visit Latimer Court and Street. Ms. Rhodes handed her petition to Ms. Back. Ms. Rhodes stated she has nothing new to add to her opposition to this request; at the last meeting she opposed the request and she still opposes the request.

Mr. White stated that at the last meeting the issues of drainage and the fence were discussed, what other physical issues are there. Ms. Rhodes stated the largest concern is the traffic and the lack of parking. Even if the parents are dropping off their children they will park on the street in front of her house thus blocking her driveway.

Ms. Snyder asked Ms. Rhodes if having the school was worse than having an empty building in the neighborhood. Ms. Rhodes stated that a school is not bad but it will make living in the neighborhood difficult. The traffic is a major concern.

Merrick Evans, 440 East Latimer Place, Tulsa, OK; stated when he moved into the neighborhood a church was in operation in the subject building. He does not think the church traffic was a problem compared to the anticipated traffic of the proposed school. He had problems with the traffic produced by the church patrons but he thinks the problems will be compounded with the anticipated school traffic. He does not think the people on any other street other than Latimer Place will be impacted by the school traffic, but people that live in very close proximity to the proposed school oppose the request. The owner of the subject property lives behind the subject property.

Rebuttal:

Mr. Mikel came forward and stated that 12 of Mr. Evans neighbors signed his petition showing they are in favor of the proposed school. When he took the petition around he circled the block. The main thoroughfare for the proposed school will be Frankfort not Latimer Place. The traffic will probably come from Pine to Frankfort which would be on the east side of the school, and Mr. Evans and Ms. Rhodes live on the west side of the

proposed school. That is not to say that no one will ever drive on Latimer Place to reach the school but the majority of the traffic will be using Frankfort.

Mr. Tidwell asked Ms. Brown how many adults will be at the facility. Ms. Brown stated there will be one teacher and one aide for every 20 children. Mr. Tidwell stated that with that in mind there would probably be 10 or 11 vehicles needing parking, and would be part of the traffic.

Ms. Snyder asked Ms. Brown where the children would be playing because the lot is considerably smaller than the one acre normally required for a school. A small lot and space needed for parking, there is no request before the Board today in regards to the parking, so where would the children play. Ms. Brown stated that originally the children were going to play in the rear yard of the building but now that the City is requiring parking there will be space leased from a neighbor for a playground for the school.

Mr. White asked Ms. Brown which neighbor would be leasing the space to the school. Ms. Brown stated it would be neighbor in the immediate rear of the subject building, which is the person who owns the subject building.

Mr. Tidwell asked if anyone would have to cross any street to reach the playground. Mr. Mikel stated that the proposed playground area is immediately adjacent to the proposed school and no one will be crossing any street to reach the playground.

Comments and Questions:

Mr. White stated the school itself has an excellent reputation, but he still has a major concern about allowing a high people volume facility in a residential neighborhood that does not have a good traffic flow pattern established. He is concerned about the lack of playground facilities for four year olds. If he were inclined to approve this request it would be with several conditions starting with the drainage problems and fencing around the property to protect the four year olds.

Mr. Henke stated he could support an approval with a one year limitation to see how the school is going to impact the neighborhood. This is a school for four year olds only and that is a one year cycle so children would not be uprooted after a year.

Mr. Tidwell stated that he would also be inclined to approve the school for a one year school term, along with the installation of a board fence and the correction of the drainage problems. After one year, if the neighbors had a problem with the school or the traffic they will be here to voice their opinions.

Ms. Snyder could support this if there are limitations. She thinks most drivers will use Latimer to reach the school because that is how she reached the subject property. It concerns her that there are so many Variances needed for the proposed school, meaning the proposal may not be appropriate for the area. She understands the concerns about the traffic also.

Ms. Back stated the reason for the multiple Variance requests is because it is an existing structure built before the code was adopted.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Snyder, Tidwell, White “aye”; no “nays”; no “abstentions”; Van De Wiele absent) to **APPROVE** the request for a 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). The time limitation on this approval will be until June 2015. This approval is also subject to per plan 3.14. The additional conditions will be that the west side of the property will have all drainage corrected as to where it does not drain to the property on the west side of the subject property. There is to be an eight foot board fence installed the entire length of the property line, 135’-0”, on the west side of the subject property. This fence on the west side is to be installed within the next three months from today’s date of November 12, 2013. The hardship for all five of the Variances is based upon the fact that this structure is a legal non-conforming structure and the building was an existing before the bulk and area requirements went into the Tulsa zoning code. 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. 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 BLK 5, DOUGLAS PLACE ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

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NEW BUSINESS

21646—Deloris Hughes

Action Requested:

Special Exception to permit a carport in the required front yard (Section 210.B.10.g); Variance of the side setback for a carport in the required front yard from 5 feet to 4

feet 3 inches (Section 210.B.10.b). **LOCATION:** 1359 East 43rd Street South (CD 9)

Presentation:

H. I. Aston, 3310 South Florence Place, Tulsa, OK; stated he is an attorney representing Ms. Deloris Hughes. Mrs. Hughes and her late husband had converted a den into a bedroom and approximately nine years ago they constructed the subject carport for their home. Mr. Aston presented a petition that had been signed by all the neighbors on her block, except for two houses that are empty. This petition shows those neighbors to approve of the carport. In Ms. Hughes neighborhood, in a three block area, there are approximately nine homes that have carports in the front of the house.

Mr. White stated there is a problem with the existing placement of the carport, it sits three feet onto City property.

Mr. Henke stated the carport looks like it is a moveable structure because it has a frame on the bottom.

Mr. White stated he would be inclined to approve this request with the condition that the carport be moved back out of the City right-of-way, toward the house, approximately three feet.

Deloris Hughes, 1359 East 43rd Street, Tulsa, OK; stated she does not know how the carport can be moved.

Mr. Henke stated the Board of Adjustment does not have the authority to give approval to something that is in the City's right-of-way. Ms. Hughes stated that she did not realize the carport was in the right-of-way.

Mr. White informed Ms. Hughes that if she did not want to move the carport she would need to go before the City Council and receive a license agreement to leave the carport in place, and he does not think she would want to do that.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Snyder, Tidwell, White "aye"; no "nays"; no "abstentions"; Van De Wiele absent) to **APPROVE** the request for a Special Exception to permit a carport in the required front yard (Section 210.B.10.g); Variance of the side setback for a carport in the required front yard from 5 feet to 4 feet 3 inches (Section 210.B.10.b). This approval is with the condition that the existing carport is

moved back approximately three feet toward the house to get the carport out of the street right-of-way. Or in the alternative Ms. Hughes is to seek a license agreement from the City of Tulsa. The hardship is the fact that the carport has existed for nine years and there are other carports in the neighborhood. 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. 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 20 BLK 3, DON-LEE, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21648—David J. Brown

Action Requested:

Variance to allow an accessory structure to cover more than 25% of the required rear yard (600 square feet) (Section 210.B.5.a); Variance of the maximum floor area permitted for detached accessory buildings in the RS-2 district from 500 square feet to 1,200 square feet (Section 402.B.1.d). **LOCATION:** 551 South 89th Avenue East **(CD 3)**

Presentation:

The applicant was not present. Mr. Henke stated this case will be moved 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.

21649—A-MAX Sign Company

Action Requested:

Variance of the height of a sign from 50 feet to 78 feet in an IL zoned Freeway Corridor (Section 1221.E.1). **LOCATION:** 6868 East Broken Arrow Frontage Road South **(CD 5)**

Presentation:

Don Griffin, 6868 Broken Arrow Expressway, Tulsa, OK; stated he is a partner of and the President of the subject Toyota dealership. Mr. Griffin informed the Board that there is an error in the Variance request, it should state 35 feet to 70 feet not 50 feet to 70 feet. This request is due to a visibility issue only.

Mr. Henke asked if this discrepancy would affect the notice. Ms. Miller stated it is a greater Variance.

Mr. White stated that 50 feet is the code, so this is to go from the maximum code to a greater height, and this sign is less than the code.

Mr. Griffin stated this request is strictly because of a visibility issue. The number one complaint he has from customers is that they cannot find the dealership. The elevation of the freeway causes the sign to not be seen from the highway.

Mr. Tidwell asked if the sign will be the same sign and only be increased in height. Mr. Griffin answered affirmatively.

Brian Mullins, 6868 Broken Arrow Expressway, Tulsa, OK; stated the width of the sign will be identical. The only difference in the sign will be that the new sign will have legs instead of a solid base.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Snyder, Tidwell, White “aye”; no “nays”; no “abstentions”; Van De Wiele absent) to **APPROVE** the request for a Variance of the height of a sign from 50 feet to 78 feet in an IL zoned Freeway Corridor (Section 1221.E.1), subject to conceptual plan 6.16. The sign is to be in the same location as the existing 35 foot sign. Finding that the topography around the business is such that the 35 foot sign is not visible for a great distance, and the extra height will alleviate the visibility problem. 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 1218N & 355E SWC NW TH E62 NE292.86 CRV RT 432.22 TH SE142.24 CRV RT 502.94 W484.93 N82.54 W667.93 N294.93 POB SEC 23 19 13 9.778ACS, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21650—Jared Jordan

Action Requested:

Verification of the spacing requirement of 300 feet from a public park, school, or church for an Adult Entertainment Establishment (Bar) in the CBD District (Section 1212a.C.3.b). **LOCATION:** 302 South Cheyenne Avenue West, 210 West 3rd Street South (**CD 4**)

Ms. Snyder recused herself and left the meeting at 2:12 p.m.

Presentation:

Jared Jordan, 6926 East 20th Street, Tulsa, OK; no presentation was made but the applicant was available for any questions from the Board.

Mr. Henke stated the Board had received the applicants survey, which is the Board's exhibit 7.9.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 3-0-1 (Henke, Tidwell, White "aye"; no "nays"; Snyder "abstaining"; Van De Wiele absent) based upon the facts in this matter as they presently exist to **ACCEPT** the applicants request for a Spacing Verification for the proposed adult entertainment establishment (bar) CBD District, subject to the action of the Board being void should another referenced conflicting use be established prior to this adult entertainment establishment, per the applicant's exhibit 7.9; for the following property:

N60 LT 1 & E10 VAC ALLEY ADJ ON W BLK 122, N60 LT 6 & W10 VAC ALLEY ADJ ON E BLK 122, TULSA-ORIGINAL TOWN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

Ms. Snyder re-entered the meeting at 2:14 p.m.

21651—Brian G. Hall

Action Requested:

Variance of the minimum setback requirement for a detached accessory building located in the required rear yard from 3 feet to 1.5 feet (Section 210.B.5.b).

LOCATION: 1524 South Owasso Avenue East **(CD 4)**

Presentation:

Dr. Brian Hall, 1524 South Owasso Avenue, Tulsa, OK; stated on the prepurchase inspection he was informed that the foundation of the detached garage was unsafe for long term use. A plumbing inspection revealed breaks in the original clay pipe. The house and garage was built in 1918, thus the decision was made to demolish the existing garage and rebuild the detached garage keeping it in the look of the period home.

Mr. Henke stated the Board is in receipt of a letter from the Historic Preservation Commission.

Interested Parties:

Carolyn Lee, 1520 South Owasso, Tulsa, OK; stated she is Dr. Hall's neighbor to the north. She is in support of Dr. Hall's request. She too owns an older home and would encourage an expedient variance that would be effective for people that own older homes.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Snyder, Tidwell, White "aye"; no "nays"; no "abstentions"; Van De Wiele absent) to **APPROVE** the request for a Variance of the minimum setback requirement for a detached accessory building located in the required rear yard from 3 feet to 1.5 feet (Section 210.B.5.b), subject to the conceptual plan on page 8.13. The Board finds that the structure to be demolished is to be replaced with a structure having the same side yard setback and rear yard setback as the existing building, except to the new structure will be extending further to the north. The existing structure was built well before the Zoning Code so it is non-conforming. The property in a HP overlay area and the Historic Preservation Commission have given their blessings to the Variance request. 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 3 & 4 & E10 VAC ALLEY ADJ ON W BLK 5, MORNINGSIDE ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

Mr. Henke left the meeting at 2:19 p.m.

21652—Sanders Engineering

Action Requested:

Variance of the frontage requirement in a CS District from 150 feet to 61.76 feet to permit a Lot-Split (Section 703, Table 2). **LOCATION:** North of the NW/c of East 31st Street on the West side of South 129th East Avenue **(CD 6)**

Presentation:

Dave Sanders, Sanders Engineering, 11502 South 66th East Avenue, Bixby, OK; stated the property was purchased in two pieces. The south parcel was part of an existing plat, the Blue Rob Addition. The north parcel was unplatted. Both parcels are in the CS zoning district. The purchaser would like to build an age restricted, 62 years and older, apartment complex. The plans are for a two-story 40 unit building, and will require approximately 220 feet of width. The sight needs to be combined into one parcel. The property has undergone a lot combination to combine the two parcels into one parcel. The east side of the property is 129th East Avenue, the south portion of the property will have the apartment building and the parking lot, and the north portion is the portion the owner would like to plat as Lot Two. Subsequently, the purchaser would like to sell or deed that to an entity that will maintain that piece of property in an undeveloped condition for conservation purposes. When the lot was purchased it was 110 feet wide making it a non-conforming lot, and would have come before the Board of Adjustment if there had been a desire to develop the lot. Approximately 50% of the north lot is flood plain.

Mr. Henke re-entered the meeting at 2:22 p.m.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Snyder, Tidwell, White “aye”; no “nays”; no “abstentions”; Van De Wiele absent) to **APPROVE** the request for a Variance of the frontage requirement in a CS District from 150 feet to 61.76 feet to permit a Lot-

Split (Section 703, Table 2). Finding that this is necessary to have a build area on the one lot, and the balance of the property will be going into an undeveloped and natural state. The approval is per plan 9.7. Finding by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

PRT LT 1 BLK 1 BLUE-ROBB ADDN BEG NEC TH S166.70 W 497.52 N166.70 E497.52 POB SEC 17 19 14 1.91 ACS, PRT E/2 SE BEG 1391.56S NEC SE TH S110 W547.52 N160 SELY549.80 POB LESS E50 THEREOF SEC 17 19 14 1.57 ACS., CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21519-B—Eller & Detrich – Lou Reynolds

Action Requested:

Variance to utilize an existing structure for a Special Exception law office use in the RM-2 District (Section 404.G). **LOCATION:** 244 West 16th Street **(CD 4)**

Presentation:

Lou Reynolds, 2727 East 21st Street, Tulsa, OK; stated this case is back before the Board because the responder and the interveners presented a novel argument in court that Section 404.G prohibits the Special Exception use of an office without a Variance. That is an interpretation that has never been made of the ordinance by this Board or by the City, to his knowledge. The Court determined that complete relief could not be granted until this issue is resolved, so today the trial is held in abeyance pending the Board's determination.

At this point Mr. Reynolds had Ms. Back display several exhibits that were in the Board's agenda packet, and reiterated information from the packet and what had been discussed in previous Board hearings.

Section 404.G in the Zoning Code speaks to the prohibition of Special Exception for an office use in the RM zone for structures exceeding two stories in height. That is why the applicant is before the Board today. The code does not define stories and height. There is no limitation.

Mr. Henke asked if the subject building was taller than 35 feet in height. Mr. Reynolds stated this building is not taller than 35 feet. The historic qualifying language in 404.G has been interpreted as limited to new construction, it has not applied to existing structures. The subject building has two floors and an attic, which the attic is finished. If the attic needs to be unfinished the floor can be taken out. Mr. Reynolds stated that several houses that contain two stories with an attic have been approved for an office,

and had Ms. Back display pictures on the overhead projector to show the houses he was discussing. The City and the Board has consistently interpreted Section 404.G as a qualifying limit on new construction so someone cannot overpower a neighborhood. This creates an unusual ambiguity. The hardship is that this is an existing structure in a surrounding mixed use area. The structure was built in 1914, well before the adoption of the City Code. The code has conflicting height requirements. This Board has consistently approved these applications for years and years without using Section 404.G. Therefore, the trial is held in abeyance until this issue is resolved.

Mr. White asked Mr. Reynolds if it was the obvious existence of the attic that sufficient for the court. Mr. Reynolds stated that he was not sure why the Court thought this needed to be addressed in this manner. It was argued that the subject building was a three story building and the applicant needed a Variance from Section 404.G. Mr. Reynolds presented to the Court that he did not think this was how it should be interpreted, and the Court sent us back to the Board of Adjustment to have the issue addressed.

Mr. Swiney stated that Judge Nightengale did mention that the subject building is more than two stories. She did not specifically state that it is a three story building, but she did say on the record that the building is more than two stories.

Mr. Reynolds stated that his point is that it has not been interpreted that way. The City has never interpreted it that way. This Board has never interpreted it that way. All the hundreds that are in effect are proof of that. This has never been an issue. This was a new argument that was brought forth in that case.

Ms. Back stated the application was advertised as a Variance to utilize an existing structure for a Special Exception law office use in the RM-2 District. That is the way the applicant applied for it. What is in the Board's agenda packet was done by staff, and staff was directed to add the three story designation to it.

Mr. Reynolds stated that in the event the subject building is two story or three story, this Board has consistently approved Special Exceptions for office uses in structures that exceed two stories in height.

Mr. Swiney stated that the original application in January, was an application for a Special Exception to operate an office in a residential area. He can see where the item that is on the agenda can be somewhat confusing. An outside observer may say this is the same permission to operate an office in a residential area. What would be more clearly stated is to say that it would be a Variance from the number of stories; that is Mr. Swiney's interpretation.

Mr. White asked Mr. Swiney if this was actually requesting an interpretation, as to whether subject building is a two story or three story building. Mr. Swiney stated the Court has already stated that the subject building is more than two stories tall. That is why the Judge instructed the applicant to come back before the Board for a Variance.

Mr. Reynolds stated that is correct, and he showed the Board conditions that had been agreed to by the applicant and are before the Court for approval of this office use. The law office use will be limited to the practice of Civil Law, no criminal law. Office use limited to three lawyers and three staff. To maintain the existing residential character of the structure. No exterior signage. No built-in office fixtures. No paved parking area; they will use grass pavers. No rental of the garage apartment. Additional conditions are that they will limit the principal Special Exception office use to the first and second floors of the existing structure, reserving the basement and the finished attic area for accessory uses. If it pleases the Board the floor of attic can be removed. This case has reached an unusual situation because hundreds of these requests have been approved without this issue.

Interested Parties:

Brent Garrett, 245 West 16th Street, Tulsa, OK; stated he lives directly across the street from the subject property. He is opposed to the Variance request. He has been here three times. The first time was for a Special Exception for office space, which was denied. The second time was for a Variance for parking requirements and screening, both which were denied. This Variance is a big part of the requested use. It is basically asking for a Variance for something that has been denied. This is currently on appeal in District Court. Twenty years ago the neighborhood was less than desirable. The subject property had been divided into multiple units and rented by the week. The house was eventually purchased for single family use and renovated for that use. Since that time two other families have lived in utilizing all three stories. The third story is finished and has been used for years, and to tear out floors so it will not be considered a third story does not make sense. There are a lot of children in the neighborhood. There are 12 children within a 300 foot radius of the subject property, two which live immediately across the street. In 2007 Stonebraker Heights was listed on the National Register of historic places. The neighborhood has voiced their concerns at previous meetings, and that is there are law offices already existing in the neighborhood with increased traffic. There is parking that spills over from Denver Avenue into the neighborhood. There has been public displays of confrontation and disturbances in the neighborhood and that not suitable for children or family life. This is a family neighborhood. This type of business is detrimental to the neighborhood and to the children. Since the July 22, 2010 adoption of the Comprehensive Plan there have not been any relevant Special Exceptions approved by the Board of Adjustment. At this point Mr. Garrett had Ms. Back display maps on the overhead projector, i.e., areas of growth, areas of stability, etc. The resident oppose the law office being established in an area of stability which is their neighborhood. The purpose of Section 404.G is to protect surrounding areas from being overwhelmed with Special Exception office use. This neighborhood is already overwhelmed. Case BOA-19566, in May 2003, there was a house, directly west of the subject property, was granted a Special Exception for a law office and the neighborhood fought that request but lost. Part of the conditions placed on the approval of that case was to have two additional spaces within the proposed circle drive but it never happened and never enforced. The occupants of that office park in the street everyday. Mr. Garrett reminded the Board that on February 26th Ms.

Snyder stated that she could not vote to approve this request because she felt she would be approving a request for something that had not previously been approved, which the Special Exception for the law office use. Mr. Tidwell stated he appreciated Mr. Reynolds arguments but he can't change his opinion. The case has been appealed to the District Court and Mr. Garrett thinks the case should be allowed to run its course. On February 26th the Board voted 3-0 to deny that request. This request is injurious to the neighborhood and not in harmony with the spirit and intent of the Zoning Code or the Comprehensive Plan. The neighborhood fully supports the Board's previous decision and respectfully request the Board to deny this Variance and allow the court system to make the decision.

Mr. White left the meeting at 2:48 P.M.

Demetrius Bereolos, 1929 South Cheyene, Tulsa, OK; stated that in Section 7, page 31 in the National Register of Historic Places the subject house located at 244 West 16th Street is referred to "as this contributing 3-story stucco clad prairie school style single dwelling". At this point Mr. Bereolos presented Ms. Back with a copy of the page for the record. He encourages the Board to follow their pattern of denial and deny this request because of the Board's doubt as to whether this property should have any Variances or Special Exceptions approved. Judge Nightingale was clear in her order when she indicated that if the Board does reject this application the subject property owner will be able to consolidate this request as part of the existing appeal. A rejection today will simply mean that all the issues will be handled by the District Court at one hearing. In the two block area of 15th to 17th Streets there are 21 converted houses in that area. There are an adequate number of uses in regards to the converted houses into offices. There is a question in the reliability in the claim of the number of attorneys that will be houses at the subject property. It has fluctuated over the last two hearings so that presents the question as to how reliable is the claim of a limited number of attorneys. There is no mention of staff support beyond the secretaries, or any other legal services that support a law practice that might be included under this use.

Mr. White re-entered the meeting at 2:51 P.M.

Mr. Henke left the meeting at 2:51 P.M.

The neighborhood also is curious about how many opportunities the subject property owner is going to be given to massage the use of this property into an acceptable land use. There is also a concern about the argument of accessory uses. Under Table 2, which is a strict list, accessory use is permitted in residential districts and law office is not on that list. In the applicant's Exhibit A the subject property owner has made vague references to accessory uses in the basement and the attic, but there is no definition as to what those accessory uses are to be. For those variety of reasons he requests the Board to reject the Variance today.

Mr. Henke re-entered the meeting at 2:53 P.M.

Jerry Mitchell, 240 West 16th Street, Tulsa, OK; stated he lives immediately to the east of the subject property. Mr. Garrett and Mr. Bereolos has laid the neighborhood objections out very clearly, and he thinks the Board understands the situation. He encourages the Board to deny today's request.

Rebuttal:

Mr. Reynolds came forward and stated the Judge did not find that the subject property is three stories. The rule, however, stipulates to exceed two stories in height. It does not say three stories, it just says exceeds in height. The pictures that were presented of the houses in the neighborhood clearly exceed two stories in height. In regards to the reference of the National Register of Historic Places, this documentation finds this a mixed use neighborhood. With regards to the area of stability, the office use is a permitted use in the RM-2 District. Regarding the accessory uses and what they shall be, there will be active files in the attic and the closed files in the basement. The rule for Section 404.G is to exceed two stories in height. There are plenty of similar uses in the area so he respectfully requests the requested Variance be granted.

Comments and Questions:

Ms. Snyder stated she voted against the original Variance, and she will vote against this request. The Judge apparently needs a yes or no from the Board and she will vote no today.

Mr. White stated he was not at the last meeting, but had he been in attendance he would have voted for the application at the time. Since the Board has denied that request he feels that today's request is an attempt to refute the Board's previous decision. In order to maintain the previous decision from the Board he will vote against today's request.

Mr. Tidwell does not think the subject property is three stories, because other houses in the neighborhood that have the same look and aesthetic are considered to be two stories. He will not be changing his vote.

Mr. Henke stated that he cannot vote to grant relief to the subject property. That was his position in the previous case, and he sees this as further encroachment to the residential neighborhood. He thinks the subject building should not utilized as an office and he cannot support today's request.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Snyder, Tidwell, White "aye"; no "nays"; no "abstentions"; Van De Wiele absent) to **DENY** the request for a Variance to utilize an existing structure for a Special Exception law office use in the RM-2 District (Section 404.G); for the following property:

**LTS 9 & 10 LESS E6 LT 9 BLK 6, STONEBRAKER HGTS ADDN, CITY OF TULSA,
TULSA COUNTY, STATE OF OKLAHOMA**

21555—Claude Neon Federal Sign

Action Requested:

Variance for off-premise sign in an CS District to permit a project identification sign (Section 1221.F.1); Variance from sign orientation being primarily visible from the freeway (Section 1221.F.7). **LOCATION:** Sign – Parcel Address: 5525 East 41st Street South – Tenant Address: 5629 East 41st Street South **(CD 5)**

Mr. Tidwell recused himself at 3:02 P.M.

Presentation:

Bob Dail, Claude Neon Federal, 1225 North Lansing Avenue, Tulsa, OK; stated he is speaking on behalf of Ricardo's Mexican Restaurant. Ricardo's is one of Tulsa's oldest restaurants. They have been located in the Highland Plaza Shopping Center for over 38 years. They are an anchor tenant and one of the larger spaces on the property. They have always relied on 41st Street as a large portion of their sales, and have always had a street sign. When 41st Street was expanded by the City a few years ago they lost their pole sign and that loss has had an impact on their sales. They were given a small spot on the tenant sign but it is less visible than what they had, and it has not been effective. The property owner agreed to give Ricardo's their own identity, by allowing them to have their own sign added to the existing shopping center sign. The City turned down the proposed sign. Fifty years ago when the shopping center was approved and developed it was built on three lots. Ricardo's happens to be on one of the lots that doesn't touch 41st Street. According to the ordinance they are not allowed to have any identification or any signage on 41st Street. That has hurt their business. He would ask the Board to consider that Highland Plaza is one of the oldest shopping centers in Tulsa. Ordinances have changed over the last 50 years. Even though the center was built as three lots it has functioned as a single entity and a single destination over the last 50 years.

Mr. White asked if consideration ever been given to combining the three lots, or are they under separate ownership? Mr. Dail stated that life can get a little messy. The original owners of the property have passed away and their children have passed away. The existing owner of the property is 78 years of age. Reality is that in a few years there will probably be changes at Highland Plaza again.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 3-0-1 (Henke, Snyder, White “aye”; no “nays”; Tidwell “abstaining”; Van De Wiele absent) to **APPROVE** the request for a Variance for off-premise sign in an CS District to permit a project identification sign (Section 1221.F.1); Variance from sign orientation being primarily visible from the freeway (Section 1221.F.7). The hardship being is that the original sign for this particular business was removed in the widening of 41st Street, and the separate lots as they exist have the entire shopping center contained within. The sign structure to which Ricardo’s wishes to add their sign contains the businesses that are on other lots. The hardship is also that Ricardo’s needs to receive the sign permit and for Highland Plaza Shopping Center wasn’t necessarily viewed as a single location it was built approximately 46 years ago so it is functioning as a single destination. Therefore, the sign as shown on page 12.9 would be permissible. 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 50N & 466.41W SECR SW TH N260 E200 S260 W200 POB SEC 22 19 13, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

Mr. Tidwell resumed his voting Board position at 3:10 P.M.

21648—David J. Brown

Action Requested:

Variance to allow an accessory structure to cover more than 25% of the required rear yard (600 square feet) (Section 210.B.5.a); Variance of the maximum floor area permitted for detached accessory buildings in the RS-2 district from 500 square feet to 1,200 square feet (Section 402.B.1.d). **LOCATION:** 551 South 89th Avenue East (CD 3)

Presentation:

The applicant was not present.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Snyder, Tidwell, White “aye”; no “nays”; no “abstentions”; Van De Wiele absent) to **CONTINUE** the request for a Variance to allow an accessory structure to cover more than 25% of the required rear yard (600 square feet) (Section 210.B.5.a); Variance of the maximum floor area permitted for detached accessory buildings in the RS-2 district from 500 square feet to 1,200 square feet (Section 402.B.1.d) to the meeting of November 26, 2013; for the following property:

BEG 50N & 466.41W SECR SW TH N260 E200 S260 W200 POB SEC 22 19 13, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

* * * * *

OTHER BUSINESS

Staff to discuss Section 1221.C.2 pertaining to Electronic Message Centers (EMC) in residential zoning districts.

Some, or All, Use Conditions* Customarily Imposed by the Board of Adjustment in Approvals of Digital and Electronic Message Center (EMC) Signs in R Zoned Districts

1. No such Digital or EMC sign shall be operated between the hours of _____ P.M. to _____ A.M. There will be no blinking, twinkling, flashing, rolling, or animation. Scrolling will be only from right to left.
2. No such sign shall be located within fifty (50) feet of the driving surface of a signalized intersection. The fifty (50) feet shall be measured in a straight line from the nearest point on a sign structure to the nearest point of the signalized intersection.
3. No such sign shall be located within twenty (20) feet of the driving surface of a street. The twenty (20) feet shall be measured in a straight line from the nearest point on a sign structure to the nearest point of the street curb, or edge of the traveled roadway marked or understood as such.
4. No such sign shall exceed an illumination of seventy (70) foot candles measured at a two (2) foot distance.

5. No such sign shall display an illuminative brightness exceeding five hundred (500) NITs at any time between one-half (1/2) hour after sunset until one-half (1/2) hour before sunrise or six thousand five hundred (6,500) NITs between one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset.
6. No such sign shall display an illuminative brightness of such intensity or brilliance that it impairs the vision or endangers the safety and welfare of any pedestrian, cyclist, or person operating a motor vehicle.
7. No such sign shall resemble or simulate any warning or danger signal, or any official traffic control device, sign, signal or light.
8. No such sign shall be permitted to operate unless it is equipped with:
 - (a) a default mechanism that shall freeze the sign in one position or static message if a malfunction occurs; and
 - (b) a mechanism able to automatically adjust the display's illuminative brightness according to natural ambient light conditions by means of a light detector/photo cell by which the sign's brightness shall be dimmed.

*Includes conditions patterned after the provisions of paragraphs a, b, d, e, f, g, and h of Section 1221 C.2. of the Tulsa Zoning Code.

Mr. Henke stated this agenda item will be heard on November 26, 2013.

NEW BUSINESS

None.

BOARD MEMBER COMMENTS

None.

There being no further business, the meeting adjourned at 3:12 p.m.

Date approved: 12/10/13


Chair