

BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1112
Tuesday, March 11, 2014, 1:00 p.m.
Tulsa City Council Chambers
One Technology Center
175 East 2nd Street

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	OTHERS PRESENT
Henke, Chair Snyder Tidwell, Secretary Van De Wiele White, Vice Chair		Miller Back Sparger Foster	Swiney, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Thursday, March 6, 2014, at 9:22 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.

MINUTES

On **MOTION** of **TIDWELL**, the Board voted 4-0-0 (Henke, Tidwell, White "aye"; no "nays"; Snyder "abstaining"; Van De Wiele absent) to **APPROVE** the **Minutes** of the February 25, 2014 Board of Adjustment meeting (No. 1111).

UNFINISHED BUSINESS

None.

NEW BUSINESS

21682—Shane Hood

Action Requested:

Special Exception to permit a coffee roastery (Use Unit 25) in a CH District (Section 701). **LOCATION:** 1643 South Boulder Avenue West **(CD 4)**

Presentation:

This case was withdrawn by the applicant.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

No Board action required; for the following property:

LT 7, LT 8, LT 9, and LT 10, BLK 2, HARBOUR ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

Mr. Henke explained to the applicants that there were only four board members present at the present time, and that Mr. Van De Wiele is expected momentarily. But in the event Mr. Van De Wiele is not able to attend, 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 informed the audience that he would find it necessary to recuse from Item #4, Sack and Associates. Mr. Henke asked the applicants if they understood and asked the applicants what they would like to do. The applicants nodded showing their understanding and no one requested a continuance.

21701—Sean Cox

Action Requested:

Minor Variance of the required side yard from 15 feet to 12 feet to permit an addition (Section 403.A, Table 3). **LOCATION:** 6425 South Louisville Avenue East **(CD 8)**

Presentation:

Sean Cox, 3162 South Madison Avenue, Tulsa, OK; no presentation was made but the applicant was available for any questions.

Mr. Van De Wiele entered the meeting at 1:07 P.M.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-1 (Henke, Snyder, Tidwell, White “aye”; no “nays”; Van De Wiele “abstaining”; none absent) to **APPROVE** the request for a Minor Variance of the required side yard from 15 feet to 12 feet to permit an addition (Section 403.A, Table 3). This approval is subject to per plan as submitted today, March 11, 2014. Finding the hardship to be that the street the new side yard is on turns into a street with standard setbacks to the east and it will not present a problem as far as the traffic flow, and the three foot reduction is on a straight section so there will be no sight incumbrance. 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 1 BLK 2, SOUTHERN HILLS SECOND ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21696—Sack & Associates – Ted Sack

Action Requested:

Minor Variance of the required side yard from 15 feet to 13 feet abutting a public right-of-way in an RE District (Section 403.A, Table 3). **LOCATION:** 3404 South Birmingham Avenue East **(CD 9)**

Mr. Henke recused and left the meeting at 1:10 P.M.

Presentation:

Ted Sack, Sack and Associates, 3530 East 31st Street, Tulsa, OK; stated he represents Mr. & Mrs. Ames, the property owners, and they are present should the Board have any questions for them. The property is zoned RE which requires a 35 foot front setback, rear setback of 25 feet, and 15 feet setback for each side yard. All the setbacks are met except for one side yard, which is the right side of the property. The property is curvilinear which makes it difficult. In performing a survey it was discovered that the field dimensions east to west. On the south boundary line it is one and a half feet short, and on the north boundary line it is over four feet short. That is what caused the encroachment. The property was not as it was platted. When the architect and builder laid out the property they were not aware of the shortcomings. The property is quite unique in the way 34th Street connects to Birmingham at an acute angle, making for a very wide intersection.

Mr. Van De Wiele asked Mr. Sack if he knew how far the house on the northeast corner is away from the intersection, because he is trying to gain perspective in comparison to the 13 or 15 feet that is being considered. Mr. Sack stated that he would guess it to be about 30 feet from the corner of the house to the curb.

Interested Parties:

Pam Iacoe, 2521 East 34th Street, Tulsa, OK; stated she lives directly across the street from the subject property. Ms. Iacoe presented pictures to Ms. Back to display on the overhead projector. She stated she called the City about a month ago and complained about the house being too close to the curb. The City told her that when living in a corner house the owner can choose what is the front and what is the side of the house. It is arbitrary to the where the front door is, but the owner can choose. It is obvious the subject property owners have chosen Birmingham as the front with 34th Street being the side even though that portion of the house has the front door. She does not know how the house ended up being too close to the street, either the house is too large for the lot or it was placed on the lot incorrectly. The owners have owned the subject lot for over three years so there has been time to design a house that would fit the lot. The fact that the structure is partially built does not mean that the code can be ignored, even if the infraction was not caught earlier. The house was designed by a credentialed architect and is being built by a licensed builder who know the code. She realizes the request is for only two feet which does not seem like much, but 2/15 is more than 13% which is significant. The house sits in a curve and when landscaping and a sidewalk is added to the subject property the view of the intersection will be inhibited. She does not want to be a bad neighbor but she wants to have the code followed. The residents look to the Board of Adjustment to protect the neighborhood from harm, and request the Minor Variance be denied.

Mr. Van De Wiele asked Ms. Iacoe to explain what harm she thought would be brought to the neighborhood. Ms. Iacoe stated that from her perspective, she is looking at a house across the street from her home that is basically sitting on the curb. Once there is a porch, sidewalk and landscaping added to the property the subject house will be

even closer to the street. There are no houses for blocks that are 13 feet from the curb, especially the front door.

Mr. White stated that when she (Ms. Iacoe) referred to the 13% change, it is actually 13.33%. Ms. Iacoe it is 13.33% repeating. Mr. White stated that the 13 feet from the curb she is referring to is actually 13 feet from the property line not the curb.

Mr. Van De Wiele asked Ms. Back to display a drawing on the overhead projector and he pointed out the property line and the curb line so Ms. Iacoe could see the difference.

Terri Lowell, 3420 South Birmingham Avenue, Tulsa, OK; stated she lives two houses away from the subject property, to the south. She would like to emphasize to the Board the disappointment the residents have in the house being built outside of the required setbacks. Not all of the residents were able to attend this meeting but there is a petition signed by them showing opposition to this request, and she presented the petition to the Board. The owners have owned the lot for three years and working with credentialed professionals who know the code requirements. There is no excuse for why the house was designed and placed on the lot as it is. The residents hold their neighborhood in very high esteem. The residents welcome new neighbors but they want to make sure that their homes are not overshadowed by a house that has knowingly been built outside of the required setbacks. The subject house placement is also a safety concern, especially at night because it is difficult to see around the corner clearly. The residents respectfully request the Board deny the Minor Variance.

Mr. Van De Wiele informed Mr. Swiney that he had been looking at the petition presented to the Board by the residents and noticed that one of his law partner's spouse signed the petition, so he is going to recuse himself from this case. Mr. Swiney stated that if Mr. Van De Wiele feels there is a conflict it is only proper that he recuse.

Mr. Van De Wiele recused himself and left the meeting at 1:30 P.M.

Rebuttal:

Ted Sack came forward and presented a scenario of what happened on the subject lot. Upon purchasing the lot Mrs. Ames visited with INCOG and with the City of Tulsa Development Services. After these appointments she received a recommendation for a zoning clearance permit which she did. She found out the property is zoned RE and took the permit to the architect. The architect created the plans and they were submitted for a permit approximately one year later. The architect laid the property out showing the 15 feet on both sides of the property. Then building started and he asked to have lot surveyed. After the construction was started the builder ran into some water problems, an underground spring requiring piers to be placed. Due to all this activity the builder lost his control. The house was laid out parallel and perpendicular to the west boundary and that is what was used for the layout. The problem is the property is short and it was not realized the property is short. Due to all the construction restraints that

the builder had and the time it took originally he lost a lot of his control on the east side of the subject property. How the builder found out about the property being short is through the requested survey. The request is for two feet in a small triangle, and with the wide intersection and the corridor that is maintained the two feet should not present a problem. He would respectfully request the Board give approval to the Minor Variance.

Mr. Tidwell asked Mr. Sack if he knew the height of the subject house. Mr. Sack stated he did not know the exact height of the house but he knew it falls under the required 35 foot height restriction.

Ms. Snyder asked Mr. Sack if there were any problems when the permit was requested. Mr. Sack stated there was no problem with the permit. The problem is that the boundary is short, therefore, it creates the encroachment.

Mr. Tidwell asked if that was the fault of the builder. Mr. Sack stated no. It is just the way it is over time. The boundary is based on corners and the dimension between the corners does not agree with the plat, and in this particular case it is short.

Mr. White asked Mr. Sack if he knew when the sub-division was established. Mr. Sack thought it was 1950. Ms. Iacoe stated that her house was built in 1948.

Ms. Iacoe came forward and stated that she appreciates all the efforts the subject property owners have gone through, but if she had identified a problem a couple of years ago with her dream house she would have worked with the builder and the architect to make sure it will properly fit the lot. She does not understand how only a couple of months ago the builder would discover that there is a two foot shortage. That is inconceivable to her and that it would be an issue after a three year process.

Mr. Sack stated that he thinks the owner did do their due diligence and went through all the proper steps and had professionals involved. Unfortunately the property was short without anyone's knowledge. The survey did not indicate there was a shortage, but the owners did take all the proper steps.

Mr. White asked Mr. Sack when the two foot shortage was actually discovered. Mr. Sack stated the shortage was discovered about two week prior to the application to the Board of Adjustment being completed.

Ms. Snyder asked Mr. Sack if there had been a citation issued by the City. Mr. Sack answered no. The Inspector checked the plans and he was satisfied. There was no violation, and the building crew is still working on the property.

Ms. Back informed the Board that the application to the Board of Adjustment was made on February 25th.

Comments and Questions:

Ms. Snyder stated that there are two properties to the north of the subject property that have had Variances granted, and they are large Variances than the two feet being requested today. Therefore, she can support the approval of today's request because it is only two feet in a side yard.

Mr. Tidwell stated that he has a problem with the fact that the survey of the property was not performed in a timely manner. But due to the fact that the Variance request is for only two feet he will support approval of today's request.

Mr. White stated this Board has heard many cases where the encroachment in the specified right-of-way has been on a rectangular tract. This case involves two small triangles on a house that are two feet. The transition from a 50 foot to a 60 foot street, included with the transition from a curvilinear street to a straight street combines to produce part of the visual problems with the curb. He can support the approval of today's request.

Board Action:

On **MOTION** of **SNYDER**, the Board voted 3-0-2 (Snyder, Tidwell, White "aye"; no "nays"; Henke, Van De Wiele "abstaining"; none absent) to **APPROVE** the request for a Minor Variance of the required side yard from 15 feet to 13 feet abutting a public right-of-way in an RE District (Section 403.A, Table 3), subject to per plan 4.15. The Board finds that this is a Minor Variance and covers only two small tips of the subject house being constructed and they are in the side yard. 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-1-BLK-3, TIMBERLAND ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

Mr. Henke and Mr. Van De Wiele re-entered the meeting at 1:52 P.M.

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OTHER BUSINESS

21605—San Juan Gaytan

Special Exception to allow New and Used Auto Sales and Tire Sales (Use Unit 17) in the CS District (Section 701, Table 1); Variance of the requirement that no merchandise may be displayed outside within 300 feet of an R District (Section 1217.C.2); Variance of the building setback from the centerline of North Lewis Avenue East from 85 feet to 43 feet for a used car and tire sales use in an existing building (Section 703, Table 2).

LOCATION: 1417 North Lewis Avenue East **(CD 3)**

The applicant appeared before the Board August 27, 2013 and November 26, 2013. His request was approved with conditions on August 27, 2013. The applicant was requested to reappear before the Board, as part of the conditions, in December 2013 for an update which was done. The Board requested a second appearance, after three months, for an update on the progress.

Ms. Back informed the Board that Mr. Martinez, who spoke on behalf of Mr. Gaytan at the last hearing, will not be able to attend today's hearing because he is detained at a prior appointment. Ms. Back and Mr. Van De Wiele performed a site visit with Mr. Gaytan and Mr. Martinez and the Board has pictures of that site visit for reference.

Presentation:

San Juan Gaytan, 1417 North Lewis Avenue, Tulsa, OK; made no presentation but was available for any questions.

Board Action:

No Board action required because of the prior approval received from the Board. Mr. Henke stated that Mr. Gaytan has done a great job in cleaning up subject property. Mr. Henke asked the Board members if any of them had any reservations about the subject property. Mr. Van De Wiele stated he had no reservations and thought Mr. Gaytan has done a great job.

Mr. White asked about the items along the fence line that apparently are the property of the property owner. Mr. Van De Wiele stated that Mr. Gaytan and Mr. Martinez will be visiting with the property owner to get those materials cleaned up as well. The covering for the tires will be installed in the spring.

Mr. Henke asked that the record reflect that the Board is unanimous in accepting the work Mr. Gaytan has performed on the subject property.

NEW BUSINESS

None.

BOARD MEMBER COMMENTS

None.

There being no further business, the meeting adjourned at 1:56 p.m.

Date approved: 3/25/14

Frank X. Hunter

Chair