

BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1119
Tuesday, June 24, 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 Sparger Foster Hoyt	Swiney, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Thursday, June 19, 2014, at 12:42 p.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. Miller read the rules and procedures for the Board of Adjustment Public Hearing.

MINUTES

On **MOTION** of **TIDWELL**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, VanDeWiele, White "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the **Minutes** of the June 10, 2014 Board of Adjustment meeting (No. 1118).

UNFINISHED BUSINESS

21707—Eller & Detrich – Lou Reynolds

Action Requested:

Appeal of an Administrative Official determining that there is a home occupation at this residence (Section 1605); ***In the alternative***, Special Exception to permit a

Home Occupation in the RS-1 District (Section 402.B.6.B). **LOCATION:** 1140 South 83rd Avenue East **(CD 5)**

Presentation:

The applicant has requested a continuance to the July 8, 2014 Board of Adjustment meeting.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White “aye”; no “nays”; no “abstentions”; none absent) to **CONTINUE** the request for an Appeal of an Administrative Official determining that there is a home occupation at this residence (Section 1605); *In the alternative*, Special Exception to permit a Home Occupation in the RS-1 District (Section 402.B.6.B) to the meeting on July 8, 2014; for the following property:

N/2 LT 12 BLK 2, FOREST ACRES, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21726—Eller & Detrich – Lou Reynolds

Action Requested:

Special Exception to allow for a drive-thru bank in an OL District (Section 601); Special Exception to permit an 8’-6” screening fence along the North lot line (Section 210 B.3); Variance to allow 2 signs on one street frontage in an OL District (Section 602.B.4.b); Variance from allowed 61 square feet of display surface area to permit a 35 square foot wall sign and a 97 square foot monument sign (Section 602.B.4.c); Variance to allow for a 23 square foot digital display (Section 602.B.4.f); Variance to reduce the building setback from the centerline of East 21st Street to 75 feet from 100 feet (Section 603). **LOCATION:** 2525 East 21st Street **(CD 4)**

Mr. Henke recused himself and left the meeting at 1:04 P.M.

Presentation:

Lou Reynolds, 2727 East 21st Street, Tulsa, OK; stated he is representing Citizen Security Bank and John Pixley, President of Citizen Security Bank. The facility will be a new commercial banking facility. The subject property is comprised of five lots with three buildings. The middle building is two stories and has windows on all sides and is

30 feet tall and set back ten feet from the residences on the north side. The bank proposes a one-story banking facility. The building will maintain the 30 feet but it is only an architectural feature. The existing two-story building is about 60 years old and is in poor condition. There are two existing monument signs on the property. Before the case was filed a notice was sent out to properties within 300 feet and then held a meeting to discuss the proposed project with everyone. There were two primary concerns from the Lewiston Garden neighborhood, and that was the screening and the lighting. The property is too steep so the grade will be lowered about five feet and leveled. The cut in will be reinforced with a concrete retaining wall on the west end and on the east end there will 12 foot evergreen trees planted and spaced eight feet apart. The top of the screening fence will be close to the top of the roof line of the neighboring property. One of the signs will be a 35 square foot wall sign that is on the east side of the building on an architectural feature. This feature is over 100 feet from the property on the north side, and it will not have much of an impact on the neighborhood. The architectural theme is to have pitches on the roof that will give the building a residential look and character. Mr. Reynolds had pictures displayed on the overhead projector showing the proposed plan and design, a photometric lighting lay-out, and the proposed new monument sign for the bank with a 23 square foot digital display area. Today the subject property is five lots and there could be five monument and wall signs placed, but the property will become one lot. The applicant is requesting two signs for the future one lot. The Comprehensive Plan calls for the building to be moved closer to the street and the applicant wants to be able to move the building closer to the street to get away from the residential area. The proposed building will be placed in line with Mid-First Bank to the east, will be consistent with Park Brewster's Law Office, and will be consistent with the other buildings.

Interested Parties:

Carol Aspell, 2520 East 20th Street, Tulsa, OK; stated she lives directly behind the proposed bank. The proposed bank was a real surprise to her because she bought the property with the intention of being in a neighborhood. The proposed bank will make four banks within a two block area and she does not think that makes much sense. The applicant has worked with the homeowners, and she did attend the meeting. She has concerns over the traffic because she feels the traffic will just circle her back yard. She understands there will be fences erected but sometimes that is not much of a barrier. She is concerned about the lighting even though the applicant has assured her that the lighting will not affect her back yard. The signs are also a concern. The Prosperity Bank has no signs and it fits into the neighborhood nicely. The neighborhood is like a historic district because it is in an older part of Tulsa, and the building will be new looking. She wishes the building was not going to be built. This is a situation that she objects to.

Rebuttal:

Lou Reynolds came forward and stated that the most serious thing is safety and traffic. There will not be a lot of traffic and the concrete retaining wall will provide a safety factor. The proposed building is planned out very well and the neighborhood concerns were listened to and taken into consideration.

Mr. Tidwell stated that the photometric lighting plan is well done and should not present a problem to the neighborhood.

Comments and Questions:

Mr. Van De Wiele thinks the proposed plan is a less intensive use than what the existing use was. The lowering the height of the building and lowering the grade seems to be a great consideration to the neighborhood.

Mr. Tidwell stated that he is familiar with the area and he thinks this project will present less traffic to the area.

Ms. Snyder stated that she does not believe that a digital sign should be allowed, because there are no digital signs in the immediate vicinity. If this sign is allowed then the neighboring banks and businesses will come before the Board to request digital signs, and she feels the Board will find it necessary to approve future sign requests if this one is allowed today.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 3-1-1 (Tidwell, Van De Wiele, White “aye”; Snyder “nays”; Henke “abstaining”; none absent) to **APPROVE** the request for a Special Exception to allow for a drive-thru bank in an OL District (Section 601); Special Exception to permit an 8’-6” screening fence along the North lot line (Section 210 B.3); Variance to allow 2 signs on one street frontage in an OL District (Section 602.B.4.b); Variance from allowed 61 square feet of display surface area to permit a 35 square foot wall sign and a 97 square foot monument sign (Section 602.B.4.c); Variance to allow for a 23 square foot digital display (Section 602.B.4.f); Variance to reduce the building setback from the centerline of East 21st Street to 75 feet from 100 feet (Section 603), subject to conceptual plans on pages 3.19A, 3.20, 3.21A, 3.21B, 3.23 and 3.24. Finding that the applicant’s intended use of the property to be a less intensive use than what is currently constructed. The building on the property on the property is being significantly reduced by approximately 50% and is being lowered from a two-story to a one-story, as well as, portions of the lot is being lowered. The Board finds by reason of these 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 variances 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. Finding the Special Exception will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; for the following property:

LT 9-10 BLK 4 WILMAC-KNOLL ADDN LT 6-8 BLK 2 GILBERT ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

Mr. Henke re-entered the meeting at 1:35 P.M.

NEW BUSINESS

21727—Douglas Boyd

Action Requested:

Appeal of an Administrative Official suggesting the official erred in citing Tulsa Recycle & Transfer Inc. for violating City of Tulsa Ordinances, Title 42, Chapter 12, Section 1226 by the outdoor storage of recycled materials within 300 feet of an R District (Section 1226.C.1). **LOCATION:** 1150 North Peoria Avenue East **(CD 1)**

Mr. Van De Wiele recused himself and left the meeting at 1:36 P.M.

Presentation:

Douglas Boyd, 1717 East 15th Street, Tulsa, OK; stated he is representing Tulsa Recycling and Transfer, which will be referred to as TRT. TRT operates a recycling plant at the subject address which is called a clean burn municipal waste recycling facility. The company takes in waste that has been collected from residences in Tulsa, run the waste through an elaborate system and the product produced is called processed recyclables. It is cardboard, mixed paper, plastic, steel and aluminum. This product is baled under intense pressure and then it is wired together as a bale. The dispute is over the storage, staging, or placement, whatever terms is to be used, of the processed materials. Mr. Boyd presented pictures of the finished processed bales that were placed behind a concrete wall but within 300 feet of an R District. It is not possible to store the bales inside because of the bale size, and Word Industries also stores their fabricated pipe inside the building on the subject property. When the violation was received there was a meeting with the neighborhood inspector and his supervisor. At that time the applicant was informed that not only could he store his product within 300 feet of the R District but that he could not store the final product anywhere on the seven acre tract because there is a boundary that touches the R District. Section 902, Industrial Uses Permitted in Industrial Districts of the zoning code states, "Accessory uses customarily incident to the principal use permitted in an Industrial District are permitted in such district." Is this is something that is incidental or customarily incidental to an IM District? Mr. Boyd stated it is. Every IM District has IM storage, and he cited four other businesses within 800 feet of the TRT tract. They all have outdoor storage, and every one of them touches an R tract except one but it is only separated by 50 feet. Mr. Boyd believes that TRT and the others are right. The section of the code recognizes this in Section 902.B.3, "Accessory storage of materials, equipment, or products within 200 feet of an abutting R District, shall be screened by the erection of a

screening wall or fence along the lot line or lines in common with the abutting R District". It does not stipulate outdoor storage, but if it were indoors there would be no need for a screening fence or wall. Mr. Boyd stated that in his opinion Section 902 is the outdoor storage of materials, equipment, or property is allowed in an IM District provided that the storage is within 200 feet of an R District it must be screened by a wall or fence. At this point Mr. Boyd had several pictures displayed on the overhead projector of the concrete wall that screens the subject property from the abutting R District. Mr. Boyd pointed out that the entire seven acres of the subject tract is covered in concrete, and that it was concreted on purpose to keep the dust. The subject property is swept three times a week. People are sent to the R District to pick up paper, which does not come from the bales but comes from the process itself when the south wind blows into the shop. Mr. Boyd stated that when the violation was issued there was some overlap that was outside of the fence, and it was stacked too high because the company was not aware of the rule. After the violation was received all of that was corrected. The company only stores, or stages, the recycled material on site long enough to fill a truck. There will always be bales on site because the company is always producing. Mr. Boyd stated that even if Section 902 did not exist the violation would have been issued in error because storage of product is not an IM use. IM is a use that is moderately objectionable by reason of the emission of odor, heat, smoke, noise or vibration; those are the uses that must be conducted inside of a building. The bales are benign because they produce none of these objectionable things. The recycling center was never an IM use. The violation said, "to include storage of any products and by-products". Mr. Boyd stated that he could not find that terminology in the code and does not think it exists. The only reference to storage, that he could find, was Use Unit 17 for automotive use. If the bales must be taken from behind the screening wall, the bales would need to be stored near Peoria Avenue which is more than 300 feet from the R District, and it would be in full of everyone and serve no purpose. The idea that no storage is allowed anywhere on the seven acre tract is not supported anywhere in the code as far as he could determine. Mr. Boyd stated that Air Compressors borders a small IL strip, and they have the tract that goes to the railroad and their tract is full of their product so all of their storage should not be allowed. Mr. Boyd stated that the staging or storage of processed recycles outdoors is not in violation of the zoning code unless they are placed within 200 feet of an R District and not screened by a wall or fence. The violation should therefore be vacated.

Interested Parties:

Kevin Cox, City of Tulsa Neighborhood Investigations, 175 East 2nd Street, 5th Floor, Tulsa, OK; stated this case originally was called by a citizen through the Customer Care Center. During the investigation there were other complaints received by business owners in the area and the neighborhood association. The complaint was received February 24, 2014 and the area was investigated. The complaint that was called was for a large majority of trash blowing into the neighborhood and surrounding businesses. The inspector made a site inspection in March and at that time, did not find any evidence. The property was monitored, and on the 20th of March there was another site inspection made. It was found that debris was scattered inside the fence, which was different than the previous inspection that indicated the business was cleaning their lot.

On the 28th of March an inspector spoke with the complainant that stated the subject business had been emitting trash into the neighborhood and surrounding businesses. On that same day, he and the inspector perused the code and found three different sections where the code specifically states about trash recycling. The Use Unit for the subject location is cited as a Use Unit 26, and their zoning clearance permit lists the subject company as a Use Unit 26 which clearly states indoor recycling center for metal, paper, plastic, glass or plastic products. If the subject business were to be called a transfer station, which the attorney alluded to, would place the business under Use Unit 27. Use Unit 27 states that all processing and storage within buildings or containers. If the subject business were to be called a Use Unit 15, which would be a recycle drop-off center which does happen at the site, it states all materials must be inside containers. The inspector evaluated what was being done and that is when the notice was issued. Previously to the notice being issued the department had contact with the property manager, and was very willing to work with everyone to resolve the problem. The neighborhood is on an upswing, and there is private and public partnerships that are attempting to revitalize the neighborhood. The neighborhood association is becoming more and more active. The zoning code is clear when it comes to recycling and trash recycling depots, they must be inside, inside containers, or inside a full enclosed building.

Mr. Tidwell asked Mr. Cox if he considered the compressed bales as a container. Mr. Cox stated that he considers it outside storage of a recyclable material which is prohibited under the Zoning Code under a Use Unit 26, which states indoor. When Use Unit 27 is used, looking at the transfer station of a Use Unit 27, the code states all processing and storage within buildings or containers.

Mr. Tidwell asked Mr. Cox his opinion of the attorneys referring to Section 902. Mr. Cox stated that it is invalid at this point. The way inspectors look at the code and the Use Unit itself, and what the Use Unit is described, specifically addresses a specific unit, and the code states indoor and must be contained fully enclosed, or inside of a container. That is direct to a particular use. If there is something offsetting in the code, or alluded to outdoor storage, the by-product or the product of a recyclable material. The code addresses, in his opinion, where it states indoor or storage indoor or inside of a container to keep the product from blowing or flying.

Ms. Snyder asked Mr. Cox what Use Unit the subject business was classified. Mr. Cox stated that under their zoning clearance permit that was issued by the City of Tulsa classifies the subject business as a Use Unit 26. There can be multiple uses on one lot of record. So if the business were to be classified as a Use Unit 27, the Use Unit 27 code states "trash transfer station all processing and storing within a building or containers". If the business were to be classified under Use Unit 15, if it were a recyclable drop-off depot which would be allowed by ordinance, the code states materials to be inside of a container or building. Mr. Cox stated that he believes the subject business is zoned correctly and the zoning clearance permit was issued correctly. He believes there is one factor; the subject business is taking the product that they are recycling inside, baling it, and storing the baled material outdoors. The

recyclable product, per code in his opinion, needs to be kept within a fully enclosed container or indoors.

Mr. White asked Mr. Cox if the eight foot wall would give the business any relief from the code. Mr. Cox stated that there is a screening requirement which meets the code, but the product being outdoors is a separate issue.

Mr. Henke asked Mr. Cox why the need for wall providing screening for things being stored outdoors, in this case, the bales of recyclable materials. Mr. Cox stated the wall is to keep the separation of the use between residential and commercial. Inside of the use there are other portions of the code that states no outdoor storage. There are specific things to protect the integrity of the residentially zoned neighborhood. Mr. Henke asked if the bales were considered an accessory use because the primary use is not the bales or could they come before the Board requesting a Variance. Mr. Cox stated the code is specific about the outside storage of recyclables, it cannot be stored outside.

Mr. Henke asked Mr. Swiney if he thought the applicant could be afforded relief if he came before the Board requesting a Variance. Mr. Swiney answered affirmatively.

Ms. Snyder stated that she had driven all over the area and saw outside storage all over the area. She asked how Section 902 does not apply. Mr. Cox stated that Section 902, when referring to outdoor storage within 200 feet of an abutting R District, means if outside storage is allowed within 200 feet there must be screening. The subject business product is not a product that is allowed within 200 feet of an R District. The zoning code clearly states that the subject business product must be kept inside.

Rebuttal:

Mr. Boyd came forward and stated that believes Mr. Cox glossed over the difference between principal and accessory use. That is the crux of this situation. The principal use is recycling. The accessory is the storage of the product. The code states "permitted accessory use is customarily an incident to the principal use". The storage of the product is an incident to the primary use. This would apply to all industrial districts, Use Unit 27, 26, 25, it is all the same. It is obvious when the Section 902.B is read that the storage of the materials from the subject business is the customary incident of the principal use. To build a building to store materials in for just a few days before pick up does not make sense. Mr. Cox's argument does not make sense. The argument of not being able to place the bales anywhere on the seven acres does not make sense. There is nothing in the code that states recyclables are treated differently. Indoor recycling is a part of Use Unit 26. The subject business does recycle indoors but stores the end product outdoors. The complaints the Inspection Department received was from the indoor recycling not the storage of the recyclable bales. Mr. Boyd believes a Variance is not needed and believes the company complies with the code as it is written. If the company cannot store anywhere on the seven acre tract then they will not be able to operate.

Irma Almader, 1083 North Madison Place, Tulsa, OK; stated she has lived in her house for 15 years. The transfer just recently expanded and believes that the storage of some of the recyclables outdoors is causing the smell. On some days the smell is unbearable. The trash on some days blows into the neighborhood and it is not being cleaned up like it used to be. The company used to send employees through the neighborhood to clean up and she does not see that as often as she used to see it previously.

Mr. Henke asked Ms. Almader if she sees the recyclables being stored outside before it is baled. Ms. Almader stated that on occasion she see trucks park in the yard with the trash on the truck, but most of the time the smell seems to come after it is baled.

Mr. Swiney asked Ms. Almader what sort of smell she was sensing. Ms. Almader it is a garbage smell, like food going bad.

Mr. Boyd stated that the odor is caused from ripe material, or pubescent trash. Regular trash is not delivered to the subject property, only recyclables are delivered to the site. When there is trash mixed in with the recyclables it is separated out so the trash cannot contaminate the bales. If the bales are contaminated they are rejected by the companies that purchase the recyclable bales. There are 36 employees working the line to remove trash from the conveyor belts so the bales cannot be contaminated. The smell that is being sensed is either coming from the transfer station located next door or it is coming from the building where the trash is separated from the recyclables. That building where the separation is performed is where the blowing trash comes from. When that building's large overhead doors are opened, and the wind is blowing from the south, the wind picks up the trash and blows it into the neighborhood. Mr. Boyd stated there are employees that pick up the neighborhood five times a week. There is a street sweeper that sweeps the streets and the facility three times a week. There are smells that will come and there always have been, and there always will be as long as the recycle center is in existence. The recyclable product cannot contribute to the smell problem.

Ms. Snyder asked Mr. Boyd if the storing of the bales outside was a new procedure. Mr. Boyd stated the storing of the bales started before the City contract was executed in October 2012. He thinks the outside storage started in 2008. The company only processes what they can sell. The company bales everything except glass.

Mr. Henke asked Mr. Boyd if he agreed the company is a Use Unit 26, recycling. Mr. Boyd answered affirmatively. Mr. Henke asked Mr. Boyd if he thought the transfer facility, which is separate from the subject company, is the cause of the smell. Mr. Boyd thinks the transfer company, which has been there since 1989, is part of the smell and the subject company is part of the smell. People abuse the rules of recycling by placing their trash in the recycling bins. The contamination of the recycling bins from trash is as high as 38%. The trash sorting is all done indoors but the smell does not stay within those doors, because when the large overhead doors are opened the smells travel outdoors.

Ms. Snyder asked Mr. Swiney if he thought Section 902 was applicable in this case. Mr. Swiney stated this is a question about accessory use versus the principal use. Section 902 specifically talks about accessory use. Use Unit 26, Section C.1 talks about uses it does not say principal uses or accessory uses. Looking in the definition section of the code, the definition of an accessory says a use on the same lot within a nature customarily incidental and subordinate to the principal use. Mr. Swiney stated that it seems to him that the principal use of the subject facility is recycling paper, cardboard, etc. It seems to him that the baling of the cardboard is also part of the principal use. The principal use of the subject facility is recycling. Recycling means sorting through the cardboard and baling it. It is Mr. Swiney's opinion that the baling and the storage of those bales is part of the principal use. If that is true it would seem that the accessory use in Section 902 does not apply. He would have to support what the inspector has said, and that is that the baling and the storage of those bales is the principal use. If it is then it must be conducted within an enclosed building.

Mr. Boyd stated that the baling is not conducted outdoors, it is done indoors. So now the only thing questionable is the outside storage. Mr. Boyd believes the subject company's outside storage is no different than Air Compressors storing their compressors outside. What is the difference? There is no processing being performed because all the processing is done inside. The product is processed then moved outside for storage waiting for a truck.

Robert Pickens, Manager, 1150 North Peoria Avenue, Tulsa, OK; stated the materials are mixed on arrival and the recyclables are separated. Once the recyclables are separated they are baled and staged outside. Once there are enough bales accumulated for a load they are shipped out. The bales are moving in and out on a daily basis. He established contracts with end users to move the product. The bales of recyclables are how revenue is generated to pay the City of Tulsa and pay staff. The blowing paper does not come off the bales because they are compressed at 765,000 pounds per square foot. When the winds prevail from the north it will cause a vacuum inside the building and it will push loose recyclables outside, which is mainly paper. There will not be any plastics, aluminum cans or cardboard projected into the air and going that far into the neighborhood. There are two employees that go from 7:00 A.M. to 5:30 P.M., Monday through Friday patrolling the streets three or four times a day to collect any loose paper. When trucks dump the recyclables there is some it that gets past the doors, and if it is seen it retrieved immediately. There is no loose recyclables being processed outside the facility, everything is done indoors. The only thing that is done outdoors is the staging of the baled recyclables.

Mr. White asked Mr. Pickens if the bales could be the source of the odor. Mr. Pickens stated that the bales do not emit an odor. There are some odors but it comes from the loose recyclables that have been delivered for processing. An example of the odor is soured milk or detergent odors. All of the trash rejects that are generated from the daily processing and recycling are removed from the recycling facility site daily. There is over 5,000 Tons of recyclables processed a week. When it rains and the materials get wet

there will be a stronger odor. He has increased the maintenance and sweeping to three days a week, Tuesday, Thursday and Saturday. Latimer is swept and the property is swept to keep the dust down. Mr. Pickens stated that if he lived in the neighborhood he would expect the cleaning from the business and make sure they are keeping up with their property so the property values can stay as high as possible. Mr. Pickens believes the recycling side is being misunderstood.

Mr. Henke stated that he believes the subject company is paying for the transfer station debris.

Comments and Questions:

Mr. Henke thinks this is a very interesting case, but he is not ready to overrule the inspector. He does think that if the company wants to come before the Board with a Variance request he would be willing to listen to the arguments.

Mr. White stated it is a very interesting argument. The alternative is to have another building for storing the compressed bales.

Ms. Snyder stated that if the subject company cannot store the bales outside, what is the analogy to other manufacturing companies, i.e., Word Industries that stores outside.

Kevin Cox came forward and stated the City looks at the property as a whole, the company's past and what it is currently doing. The City must look at all the boundaries and the company's use. A Use Unit 26 may not allow the storage outside but another Use Unit would allow it. This is something that City faces every day. Each individual lot must be looked at separately, look at non-conforming uses and how long a company has been in existence at the site being investigated. This neighborhood was one of Tulsa's very first neighborhoods. There are a lot of non-conforming uses and there are a lot of new businesses that must comply with the current code.

Mr. White asked what Use Units would be sufficient to allow the company to operate as they are operating now. Mr. Cox stated that he thinks the subject company is classified correctly. The Use Unit 26 is correct for the indoor recycling, but with the outside storage it may fall under Use Unit 28. A Use Unit 28 is a salvage yard and he does think that would be close to making the company compliant. It was mentioned that a Variance might be applied for, and that is why the Board of Adjustment is here. The Board is to look at all the factors for a Variance or Special Exception and whether the granting of that might or might not damage a neighborhood. The Working In Neighborhoods (WIN) must interpret the code as to how it was written, how it is applied, and how it historically has been applied.

Douglas Boyd came forward and stated that the only thing Board is doing today is either confirming or vacating a violation. The violation is storage within 300 feet. If the Board upholds the violation the product can be stored on Peoria. He hopes the issue can be settled on the outdoor storage because he fears the City will come back with another

violation saying there can be nothing stored anywhere outside. That would the facility would have to shut down.

Board Action:

On **MOTION** of **WHITE**, the Board voted 2-2-1 (Henke, White “aye”; Snyder, Tidwell “nays”; Van De Wiele “abstaining”; none absent) to **DENY** the Appeal of an Administrative Official suggesting the official erred in citing Tulsa Recycle & Transfer Inc. for violating City of Tulsa Ordinances, Title 42, Chapter 12, Section 1226 by the outdoor storage of recycled materials within 300 feet of an R District (Section 1226.C.1); for the following property:

TR BEG 339N SECR SE NE TH W868 N277 W29 N42.5 TO PT ON SL RR R/W NE ALG RR 294 CRV RT300 SE331.3 TO PT ON EL SE NE S265.8 POB SEC 36 20 12 7.085AC, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

On **MOTION** of **SNYDER**, the Board voted 2-2-1 (Snyder, Tidwell, “aye”; Henke, White “nays”; Van De Wiele “abstaining”; none absent) to **UPHOLD** the Appeal of an Administrative Official suggesting the official erred in citing Tulsa Recycle & Transfer Inc. for violating City of Tulsa Ordinances, Title 42, Chapter 12, Section 1226 by the outdoor storage of recycled materials within 300 feet of an R District (Section 1226.C.1); for the following property:

TR BEG 339N SECR SE NE TH W868 N277 W29 N42.5 TO PT ON SL RR R/W NE ALG RR 294 CRV RT300 SE331.3 TO PT ON EL SE NE S265.8 POB SEC 36 20 12 7.085AC, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

BOTH MOTIONS FAILED FOR LACK OF MAJORITY VOTE.

Mr. Van De Wiele re-entered the meeting at 2:41 P.M.

20416-A—Wallace Engineering – Carolyn Back

Action Requested:

Modification to a previously approved site plan (BOA-20416) to add an IT office building (Use Unit 11) with five required parking spaces. **LOCATION:** 5656 South 129th Avenue East **(CD 7)**

Presentation:

Carolyn Back, Wallace Engineering, 200 East Matthew Brady Street, Tulsa, OK; no presentation was made but the applicant was available for any questions.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White “aye”; no “nays”; no “abstentions”; none absent) to **APPROVE** the request for a **Modification** to a previously approved site plan (BOA-20416) to add an IT office building (Use Unit 11) with five required parking spaces. The Board has found that the request is reasonable and assures that the proposed office building is compatible and non-injurious to the surrounding area and meets the previously granted Special Exception. The subsequent approval modification meets the current zoning code requirements; for the following property:

BEG 401.47S NEC LT 2 TH W450 S699.52 E450 N699.52 POB BLK 5, PRT LTS 2 3 & 9 BEG 181.47S NEC LT 2 TH S220 W450 S249.52 W395 N470.09 E845 POB BLK 5, PRT LT 9 BEG 181.47S & 845W NEC LT 2 TH S470.09 E395 S450 W655.68 N920.25 E260.68 POB BLK 5, METRO PARK, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21729—Experius Advertising – Connie Emmons

Action Requested:

Variance to allow a digital business sign for Amini's Galleria in an OL District (Section 602.B.4). **LOCATION:** 7712 East 71st Street **(CD 8)**

Presentation:

Donna Emmons, 2424 North 32nd Street, Muskogee, OK; stated this request is to replace an old Amini's Galleria sign with a new digital business sign.

Mr. White asked if the new sign was going to be placed in the same location as the old sign and have the interior portion replaced. Ms. Emmons answered affirmatively.

Mr. Van De Wiele asked if the new sign was bigger. Ms. Miller stated that the old sign had been approved at 3'-0" x 10'-0" as a variable message sign, and the new sign will be 8'-0" tall x 10'-0" wide.

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 to allow a digital business sign for Amini's Galleria in an OL District (Section 602.B.4), subject to conceptual plan 6.17. This approval is subject to Conditions 1221.C which are the conditions on page 6.3 and 6.4 in the Board's agenda packet. The digital portion of the sign will not be operated between the hours of 10:00 P.M. and 6:00 A.M. The sign is to be eight feet tall and ten feet wide. The sign will be located in the same place as the existing sign. 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 1, HOME IMPROVEMENT CENTER, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21730—Gregory Helms

Action Requested:

Special Exception to permit required off-street parking to be located on a lot other than the lot containing the primary use for a retail store (Use Unit 14) (Section 1301.D); Variance of the required 14 parking spaces to 10 parking spaces (Section 1214.D). **LOCATION:** 1701 South Boston Avenue East **(CD 4)**

Presentation:

Rockie Anderson, G. S. Helm & Associates, 424 East Main Street, Jenks, OK; stated this is an existing building on the corner of 17th and Boston. The new owner would like to turn the building into a retail center. The back parking lot is being redone but there is not enough square footage to obtain the parking spaces that are needed. The employees will park on the triangular piece that is in the rear and it will be similar to what was done last year for the hair and nail salon. This same spot was approved last year for six parking spaces and the lot has been redesigned so there will be eleven parking spaces.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White “aye”; no “nays”; no “abstentions”; none absent) to **APPROVE** the request for a Special Exception to permit required off-street parking to be located on a lot other than the lot containing the primary use for a retail store (Use Unit 14) (Section 1301.D); Variance of the required 14 parking spaces to 10 parking spaces (Section 1214.D), subject to conceptual plan 7.21 for the primary use and conceptual plan 7.22 for the off site lot. The Board has found that the applicant is utilizing a lot for parking that is viable for no other use other than parking, and the relief that is to be granted will alleviate parking issues in the area. 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. Finding the Special Exception will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; for the following property:

LT 1 BLK 3, TOWNLEY ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21731—Jose Perez

Action Requested:

Special Exception to allow required off-street parking spaces on a lot other than the lot containing the use (Section 1301.D). **LOCATION:** 2428 East Admiral Boulevard South **(CD 4)**

Presentation:

Ed Sharrer, Executive Director of Kendall Whittier Main Street, 2308 East Admiral Boulevard, Tulsa, OK; stated he represents the merchants and property owners in the area. This is for a business located in the historic Whittier Square near Admiral and Lewis, and the building the applicant is in is divided into two shotgun spaces. The applicant cannot provided the required parking spaces because the building was constructed right up to the property line as were most buildings of the day. The Perez family can provide the ten required parking spaces less than a block away. There are parallel parking spaces available on each side of the street. Directly north of Perez Video is a gravel parking lot that has at least a twelve car capacity. The public parking lot for all the Whittier Square merchants is located about a half block to the west. There is ample parking within 170 feet of Perez Video.

Mr. Henke asked if there were any plans to pave the lot. Mr. Sharrer stated there are no current plans to pave the lot, but as business improves in the area and there is a lot of interest from people that might buy a piece of property potentially it could be paved.

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 **Special Exception** to allow required off-street parking spaces on a lot other than the lot containing the use (Section 1301.D). Finding the Special Exception will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; for the following property:

LT 6 BLK 5, EAST HIGHLAND ADDN RES B1, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21732—Bashir Harfoush

Action Requested:

Special Exception to allow a used car sales office (Use Unit 17) in a CS District (Section 701, Table 1). **LOCATION:** 9107 East 11th Street South **(CD 3)**

Presentation:

Bashir Harfoush, 9107 East 11th Street, Tulsa, OK; stated the subject facility is next door to a church and he will try as much as possible not to open another business that will bother the church. There is parking in the front of the facility with a fenced area in the rear which could be used for parking. The building is 86 feet long and 21 feet wide with a 50'-0" x 20'-0" fenced area in the rear.

Mr. Van De Wiele if used cars were going to be stored in the building or on the lot. Mr. Harfoush they may be some cars stored on the site.

Mr. White asked if the fenced area was where the car repairs were going to take place. Mr. Harfoush stated that he is not going to be doing major repairs. The cars are going to be bought from the auction, and in order to be able to purchase cars from the auction he must have a facility.

Ms. Snyder asked there was going to be any outside storage. Mr. Harfoush stated there were no plans to have any outside storage.

Interested Parties:

Charles Reynolds, Administrator for Eastwood Baptist Church, 949 South 91st East Avenue, Tulsa, OK; stated the church wants to be a good neighbor but they want to ward off anything in the beginning so there will be a good understanding between both parties. Mr. Harfoush's property is where an upholstery shop had been for 40 years. The children's playground and the church parking lot backs right up to Mr. Harfoush's property. Mr. Bashir has access to the rear of his building from the church parking lot. The church has concerns about this because they do not want a conflict to arise with the church services and functions and the business. People will be coming into the business to look at cars that are potentially going to be bought and the business only has three parking spaces in the front. The church does not want the business clients and the cars purchased by Mr. Harfoush to be parking on the church parking lot, because the church uses the lot several times a week at different times. The church is also concerned over water drainage from the detail shop of the business.

Mr. Henke asked staff if outside sales, outside storage, etc. had been applied for. Ms. Miller stated that INCOG had only been presented with the idea that the space would only be used as an office.

Mr. Tidwell left the meeting at 3:08 P.M.

Rebuttal:

Mr. Harfoush stated the he had tried to open two different businesses but the church had major concerns so he didn't open. He wants to have a good relationship with the church and does not want to disturb any church functions.

Mr. Tidwell asked Mr. Harfoush what he had to have to receive a used car dealer license. Mr. Harfoush stated that wholesale can be done from a person's house.

Mr. Tidwell re-entered the meeting at 3:11 P.M.

Mr. Van De Wiele asked Mr. Harfoush where the cars go after he purchases them from the auction. Mr. Harfoush stated the cars can be kept at the auction and they can be resold from the auction lot, but he does not want to do wholesale from the auction because sometimes cars cannot be sold to an individual from the auction lot. What he wants to do is sell to an individual.

Mr. Van De Wiele asked if the business was going to be like a car lot. Mr. Harfoush stated that he is a student and he just wants to make a living until he graduates from college.

Ms. Snyder asked if some of the cars he purchases from the auction are going to be placed inside the building. Mr. Harfoush answered affirmatively. He currently has two cars inside the building and he could place about 13 cars in the building.

Comments and Questions:

None.

Board Action:

On **MOTION of WHITE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White “aye”; no “nays”; no “abstentions”; none absent) to **APPROVE** the request **Special Exception** to allow a used car sales office (Use Unit 17) in a CS District (Section 701, Table 1) for a period of five years from today’s date of June 24, 2014. 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:

E19.66 W94.10 LT 37 & E20 W94.4 LT 38 LESS S15 FOR ST BLK 32, CLARLAND ACRES B20-37, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

20336-A—Sisemore Weisz & Associates – Darin Akerman

Action Requested:

Variance of allowed building height from 35 feet to 42 feet (Section 403.A, Table 3); Modification to a previously approved Special Exception (BOA-20336) to permit construction of pro shop and enclosed athletic courts. **LOCATION:** SW/c of East 51st Street & South Hudson Avenue **(CD 9)**

Presentation:

Darin Akerman, 6111 East 32nd Place, Tulsa, OK; stated this is a request for a modification to a site plan for the tennis center in LaFortune Park. A portion of the tennis center building is beyond the 35 foot allowable height for an RS-2 residential district. There must be at least a 40 foot height internal clearance at a minimum for a tennis center per specs and requirements. The 42 feet requested allows for the necessary beam to the roof and the ridge of the building itself. The building is approximately 250 feet away from the single family residential neighborhood on the east side. The building will have a similar look to the Kaiser Library/LaFortune Community Center making a very unified master plan.

Interested Parties:

Fred Perry, 11404 East 133rd Street, Broken Arrow, OK; stated the building will be known as the Mike Case Tennis Center. Mr. Case has donated \$1 million dollars toward the construction of the center. This is the last phase of a project that started 7 ½ years ago when twelve old tennis courts that were built in the 1960s were replaced with 18 new tennis courts. The facility will be a club house and three indoor courts. There is

an economic development aspect to this facility because Tulsa wants to attract more tournaments and this building will allow tournaments to play in the rain.

Richard Bales, County Park Director, 2315 Charles Page Boulevard, Tulsa, OK; stated he met with the Board members of LaFortune Park Neighborhood Association and the people that were in attendance were highly in favor of the proposed project.

Roger Coffey, Architect, 3519 South Birmingham, Tulsa, OK; stated this project has been years in the making. There are a number of people behind the scenes for the fund raising to make this project happen, and almost all of the money for this project was raised privately. LaFortune Park is one of the nicest active parks in Tulsa. There are always activities going on at LaFortune Park. The indoor tennis facility is the third phase of the master project. This facility will be an asset to the city that the citizens will use.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White “aye”; no “nays”; no “abstentions”; none absent) to **APPROVE** the request for a Variance of allowed building height from 35 feet to 42 feet (Section 403.A, Table 3); Modification to a previously approved Special Exception (BOA-20336) to permit construction of pro shop and enclosed athletic courts, subject to conceptual plan 10.14 and 10.15. For the Variance the height increase is to accommodate indoor tennis courts and the height is necessary to comply with the United States Tennis Association requirements. 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. Finding the Special Exception will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; for the following property:

A TRACT OF LAND DESCRIBED AS THE WEST 795 FEET OF THE EAST 875 FEET OF THE SOUTH 1475 FEET OF THE NORTH 1525 FEET OF THE EAST HALF (E/2) OF THE NORTHWEST QUARTER (NW/4) OF SECTION 34, TOWNSHIP NINETEEN (19) NORTH, RANGE THIRTEEN (13) EAST, TULSA COUNTY, OKLAHOMA, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

OTHER BUSINESS

None.

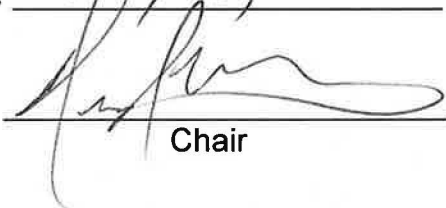
NEW BUSINESS

None.

BOARD MEMBER COMMENTS

None.

There being no further business, the meeting adjourned at 3:35 p.m.

Date approved: July 8, 2014

Chair