

BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1154
Tuesday, January 26, 2016, 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 Flanagan Snyder White, Vice Chair | Van De Wiele | Miller Moye Foster Sparger | Swiney, Legal |

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Thursday, January 22, 2016, at 10:59 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. Moye read the rules and procedures for the Board of Adjustment Public Hearing.

MINUTES

On **MOTION** of **WHITE**, the Board voted 3-0-1 (Henke, Flanagan, White "aye"; no "nays"; Snyder "abstaining"; Van De Wiele absent) to **APPROVE** the **Minutes** of the Training Session on January 12, 2016.

Mr. Swiney stated that the new City of Tulsa Zoning Code went into effect on January 1, 2016. All of the applications and matters on the agenda today were filed under the previous Zoning Code therefore the Board is enforcing the previous Zoning Code.

OTHER BUSINESS

22027—Eller & Detrich – Lou Reynolds

Action Requested:

Variance of the minimum lot width from 150 feet to 120 feet to permit a Lot-Split in the RE District (Section 5.030-A, Table 5-3). **LOCATION:** 4132 South Victor Avenue East **(CD 9)**

The applicant has withdrawn this application and is requesting a refund of \$421.00.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Flanagan, Snyder, White “aye”; no “nays”; no “abstentions”; Van De Wiele absent) to **APPROVE** the request for a Refund of \$421.00; for the following property:

LT 2 & E30 VAC STREET ADJ ON W BLK 7, BOLEWOOD ACRES, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

22029—Price Cleaver

Action Requested:

Variance to permit the expansion of a non-conforming detached accessory building with a side yard of 4 feet (Section 1405.A). **LOCATION:** 1745 South St. Louis Avenue East **(CD 4)**

The applicant has withdrawn this application and is requesting a refund of \$433.00.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Flanagan, Snyder, White “aye”; no “nays”; no “abstentions”; Van De Wiele absent) to **APPROVE** the request for a Refund of \$433.00; for the following property:

LT 23 BLK 1, SWAN PARK, PARK PLACE, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

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Mr. Henke explained to the applicants and interested parties that there were only four board members present at this meeting, and if an applicant or an interested party 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 the applicants and the interested parties if they understood and asked the applicants or interested parties what they would like to do. The audience nodded their understanding and no one requested a continuance.

Mr. Henke stated that there has been a request for a continuance from Mr. Austin Bond on BOA-22021 and BOA-22022. Mr. Henke requested Ms. Moye to read to action requested on BOA-22021.

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NEW APPLICATIONS

22021—Nathan Young

Action Requested:

Variance of the required side yard setback from 10 feet to 5 feet in the RS-2 District (Section 403, Table 3). **LOCATION:** 124 East 26th Street South **(CD 4)**

Mr. Henke requested the applicant to come forward and asked the applicant if he was agreeable to continue the case. The applicant stated that he would prefer to hear the case today.

Interested Parties:

Austin Bond, 9 East 4th Street, Suite #403, Tulsa, OK; stated that the application today requests a ten foot side setback going to five feet. The issue at hand is that plainly on the survey you can see a driveway, plants and other fixtures encroaching. The law in this state is very clear and this is not a debatable point. A request for continuance in this matter is to be able to work with the applicant in this matter to be able to resolve the issues. Mr. Bond stated that his client has owned this property since 1998 and would request a continuance until his client can resolve the matter, otherwise, he would request to speak in opposition to this application.

Presentation:

Nathan Young, 5019 East 117th Street, Tulsa, OK; stated there is not really a dispute over the property line; he believes that Mr. Bond's client just wants to determine exactly where the property line is. He believes it is an unrelated issue to his Variance request, because it has nothing to do with the property line location; it just has to do with how close the building can be to the property line wherever it should be.

Mr. Henke asked Mr. Young if the property line changed would not the frontage change. Mr. White stated that it would depend on how it changed. It could move to the side but then the other side would move also.

Mr. Bond came forward and stated that the in application BOA-22021 and BOA-22022 is the request to move the outward boundary from ten feet to five feet. A person cannot tell where ten feet begins from a structure unless the outward boundary is known. Essentially, this application can be requesting to move from ten feet to seven feet or ten feet to twenty feet. It is simply not known until a proper lawful determination where the actual property line exists. Mr. Bond stated that in simplest terms it is a fence line dispute. There will have to be something corrected and the question is where does it start and where does it end. The most efficient use of everyone's time would be to postpone this matter until the issue can be resolved.

Mr. Young came forward and stated that when a person starts at the property line, wherever it may be, they have to abide by the rules of the setback. Whether the property line is 30 feet from where it shows now or three feet from where it shows now he still has to abide by the setbacks. He believes his request has zero to do with the property line.

Mr. Henke informed all parties that if the case is to be heard today Mr. White will be recusing because he owns White Surveying Company, which is the survey under discussion, so it will require three Board members to vote in favor of the request. With Mr. Van De Wiele being out today that only leaves three Board members participating, so if the applicant wants to go forward the Board is prepared to hear the case.

Mr. Young came forward and stated that the whole thing may be a moot point because he just learned about the new Zoning Code, and what he understands is that the new Zoning Code allows RS-2 to have five feet on both sides. He understands his request was made on the old Zoning Code and that may be what the Board will be ruling on.

Ms. Miller stated that in the new Zoning Code RS-2 lot lines are five feet. Mr. Young stated that he is not sure what to do now or if he should withdraw at this point. Ms. Miller asked Mr. Young if he had submitted for his building permit. Mr. Young stated that he had not. Ms. Miller stated that even though this application was submitted in 2015 and this application would be subject to the old Zoning Code, when an application is submitted to the Building Permit Office that application will be subject to the new Zoning Code which is in place. Ms. Miller stated there will be a five foot property line per the new Code once an application is submitted to the permit office.

Mr. Henke stated the applicant could withdraw agenda items four and five, as it would relate to the fence line and allow the permit office to sort that out outside the Board of Adjustment. Mr. Young asked if he could request a refund. Mr. Henke answered affirmatively. Ms. Miller stated that not all fees could be refunded because the notifications have already been sent out.

Mr. Young stated that he would like to withdrawn agenda items four and five, and request a refund on each withdrawal.

Comments and Questions:

None.

Board Action:

No Board action required; for the following property:

**ALL OF LT 2 BLK 14, RIVERSIDE DRIVE ADDN THIRD AMD, CITY OF TULSA,
TULSA COUNTY, STATE OF OKLAHOMA**

22022—Nathan Young

Action Requested:

Variance of the required side yard setback from 10 feet to 5 feet in the RS-2 District (Section 403, Table 3). **LOCATION:** 130 East 26th Street South **(CD 4)**

Presentation:

The applicant has withdrawn this application.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

No Board action required; for the following property:

**W50.10 OF LT 1 BLK 14, RIVERSIDE DRIVE ADDN THIRD AMD, CITY OF TULSA,
TULSA COUNTY, STATE OF OKLAHOMA**

UNFINISHED BUSINESS

22013—Andy Fritz

Action Requested:

Variance to increase the maximum permitted square footage of detached accessory buildings on an RS-3 lot (Section 402.B.1.d); Variance to allow two unconnected driveways in the required front yard in the RS-3 District (Section 1301.C). **LOCATION:** 2017 West 91st Street South **(CD 2)**

Mr. White recused at 1:17 P.M.

Presentation:

Andy Fritz, 2017 West 91st Street, Tulsa, OK; stated he is the owner of the property and he will let the case report speak for itself. There was some fact finding to be done by the Board and representatives and he feels that evidence has been provided and supports his case for a hardship given the square footage and size of the building. Mr. Fritz stated that in the case report, on pages 2.17 and 2.18, he submitted a copy of the permit that was submitted by the Morton Building representative, signed and paid for by the Morton representative and not himself, and the subsequent letter on 2.18 he assumes is an explanation from the County offices explaining why the permit was botched. First line states that the application was submitted with the wrong parcel number and was unable to correct due to a problem with the munis system. Mr. Fritz stated that he believes that statement is in error. The application was not submitted with any parcel numbers by the Morton Building representative. Those parcel numbers were added after the submission of the building permit by County personnel. There was no misrepresentation. The handwriting is not the same as the person submitting the application which is obvious. The application does not even request that a parcel number be provided so there is no way the incorrect parcel number could have been provided. Mr. Fritz stated that he thinks this is a very point to clarify. The application was not submitted incorrectly, it was submitted correctly. The County offices added the incorrect parcel number. Mr. Fritz asked if City or County personnel agreed to attend the meeting today as previously discussed.

Ms. Miller stated that she does not remember the Board discussing that, but staff did meet with them and obtained quite a bit of detail. They were clear to her that the building permit application that was submitted by Morton Building Company has the incorrect parcel information on it upon submission. Mr. Fritz stated that he thinks that is a pretty east argument to dispel given, once again, by comparing the penmanship. Ms. Miller stated that the County said originally when the application was submitted it had the incorrect parcel number on it and they did find during their inspection of the site that it was the incorrect parcel number. The County then fixed it and when it was entered into the automated system, the system did not correct the zoning and the location. All of that information on the permit did not change so the permit still listed AG even though the correct parcel number is not zoned AG.

Mr. Henke stated that was the discussion at the last meeting about when the number was changed it did not populate correctly. Mr. Fritz stated that has nothing to do with him, as far as he is concerned. He is stuck in this hard spot. This is application that was submitted minus the scribbling. The permitted site plan was not included as part of the last case report because one that was submitted is an "as built" site plan. Mr. Fritz stated that he would like bring attention to the plan that was submitted with the application in March. Mr. Fritz stated that Mr. Van De Wiele noted that the survey before the Board was made in November or December and the site plan for permit was placed on the overhead projector. Mr. Fritz stated there are no mysteries and no

mistakes. Mr. Fritz stated that he has done his best to portray the information as truthfully as he possibly can and the County accepted it.

Mr. Henke asked Mr. Fritz if the submitted survey was his own survey. Mr. Fritz answered affirmatively. Mr. Fritz stated that he is a surveyor. Mr. Henke asked Mr. Fritz if he is the surveyor for his own property. Mr. Fritz answered affirmatively.

Mr. Henke asked Mr. Fritz if he was claiming that he did not know his property was in the City of Tulsa. Mr. Fritz answered affirmatively. Mr. Henke asked Mr. Fritz if he thought it was in Tulsa County. Mr. Fritz answered affirmatively. Mr. Henke asked Mr. Fritz if he used to work for the Morton Building Company. Mr. Fritz stated that he was a previous employee of Morton Building. Mr. Henke asked Mr. Fritz if he stated that Morton Building Company were the people that filed for the building permit and if they were operating off information given to them by Mr. Fritz. Mr. Fritz stated he had informed the Morton representative about the issue and he could not believe that Mr. Fritz was still fighting the issue. Mr. Fritz stated that he has detailed phone records of Morton calling the City and the County personnel as directed by the Inspector that had stopped by the site; no return phone calls. Never was a stop permit ignored. There was never a notification that was received that was not acted upon. Mr. Fritz stated that he is still trying to figure out why he is still standing before the Board.

Ms. Miller stated she and staff spent quite a bit of time digging into the facts of the case and looking at all of the documentation, all of the chronology of when the City and County Inspectors visited the site, how the process evolved when the County Inspector realized the property was in the City and the City Inspector conceded to the fact that it was in the County. This is the first that she has heard of the parcel number not being on the application. The County Inspector was pretty clear that was part of the application.

Ms. Moyer stated that in terms of the site plan the initial site plan submitted with the permit application changed to the most updated site, and she displayed the plan on the overhead projector. Ms. Moyer stated that the only difference between the two site plans is the updated site plan includes an additional portable storage building on the northeast corner. Ms. Moyer stated that she requested the applicant to update his site plan because when she did a site visit she noticed two storage buildings on the site, and the total square footage of storage buildings on any parcel is calculated for the entire storage buildings not just one. In order to make sure the applicant was requesting the necessary relief she requested he provide information about all square footage on the parcel in order to make the square footage was correct.

Mr. Fritz stated that according to the case report the first attempt to contact anyone the site was July 13th. Mr. Fritz had a photo take on June 29th of the site placed on the overhead projector showing framing. Mr. Fritz quoted a notation made a City Inspector, "on the 13th City Inspector performed a site visit; no one was working on the site; noted that Tulsa County had issued a building permit and posted on the site". Mr. Fritz stated that was his only notification of trying to contact him or place notification on the property

that he was in violation. Mr. Fritz had another photo taken on July 6th placed on the overhead projector showing the building fully enclosed and stated that at that point he was notified there was a problem with the building. Mr. Fritz stated that his hardship, and the reason he is standing before the Board today, is that he has an oversized building and two non-connecting driveways. Mr. Fritz stated the two unconnected driveway issues should go away with the new zoning if this is not approved today. The square footage of the building was approved by the Tulsa County building office and built accordingly. The hardship exists for that reason; the building was totally enclosed before he was notified of any problem.

Ms. Miller stated that the City staff has stated that a zoning review has not been performed on this site, so even though the connecting issue could go away there is still the width of the driveway and the amount of driveway surface in the front yard. There are other issues that are not part of this application. Mr. Fritz stated that he is trying to focus on this application.

Mr. Henke asked Mr. Fritz if there was anything else he would like to add. Mr. Fritz stated he has a whole file of information if necessary but he can save it for his rebuttal if it is required.

Ms. Snyder asked Mr. Fritz how long he has owned the property. Mr. Fritz stated that he moved in in February or March of 2014.

Ms. Snyder asked Mr. Fritz to explain why he went to the County instead of the City for permit. Mr. Fritz stated when he was shopping and found the house the MLS listings all said Tulsa County, unplatted with a metes and bounds description, which is typical of an unplatted rural property. The legal description calls out Tulsa County with no comment of the City of Tulsa. Mr. Fritz stated that he sat with INCOG staff in August to review the city limits once the issue came up. Mr. Fritz stated that he did see physical evidence that the city limit lines were not affecting his property and he was told verbally that he was not in the city limits. The hardship was created the date the permit was issued. The building was erected and he was informed he had a problem. Mr. Fritz stated that he does not know how much more of hardship case he can plead.

Ms. Snyder asked if there was ever a question by the County after the permit was received from the County. Mr. Fritz stated there was not. Mr. Fritz had a photo placed on the overhead projector showing four County trucks and personnel constructing his driveways. Mr. Fritz had another photo placed on the overhead projector and he stated it was June 8th. Mr. Fritz stated that as a surveyor he laid out the property numerous times with stakes moved around numerous times. Mr. Fritz showed a posted permit under a tree on the site about 12 feet from the edge of the pavement, so the neighbors cannot say they never had a chance to see a permit. Mr. Fritz had another photo placed on the overhead projector of the building be delivered on June 11th and Mr. Sullenger is in the photo leaning on the fence talking to the Morton Building delivery driver. Not once did his neighbors come forth saying they had an issue with the building

and it is obvious they had the opportunity. Mr. Fritz stated the building was not placed improperly on the lot. The setbacks are more than ample.

Mr. Fritz stated that he was directed by Mr. Ho to apply for the two Variances being requested today. This request was a part of his solution to the problem because he knew it was a sticky situation through no fault of his (Mr. Fritz) own. Mr. Fritz stated that he wishes that the City and County personnel had attended this meeting.

Mr. Henke asked Mr. Fritz if was allowed just under 1,100 square feet for the building. Mr. Fritz answered affirmatively and stated that his building is 2,880 square feet. Mr. Fritz stated the building occupies just slightly over 6% of his lot space. Mr. Fritz stated that he has 43,560 square feet of lot which make the building just a little over 6%. Mr. Fritz stated that at the last meeting the Board were allowing hardships for the size of the lot and the size of the structure so he does not think this would be out of hand. Mr. Henke admitted that it is a good size lot.

Mr. Fritz stated that he is a surveyor with 20 years experience and has been in Tulsa for eight years, he would like to make a note that city limit lines and/or zoning requirements are not a necessity to be known by a surveyor. A land lawyer does not know everything about divorce law and a divorce lawyer does not know everything about land law because there are other people in place that are relied on to do their part. Ultimately he has to go with the final word and he is in the city limits.

Mr. Henke stated that the problem he is having is that if the building had come before the Board he would have not voted to approve it because it is too big and arguably out of character, but it does not change the fact that there is a large lot.

Interested Parties:

Marvin Sullenger, 1901 West 91st Street, Tulsa, OK; stated he has lived in his house for 26 years and lives next door. Mr. Sullenger stated that the major problem with the building is the fact that he is afraid it will detract from his property value. The building is 58 feet away from his house. Mr. Sullenger stated that he was naïve because when he saw the stakes he felt the City would never a building that size to be built. When the trucks rolled in he assumed the Fritz's had the proper permits; he did not ask. The building does block the view from the west side of his house. Mr. Sullenger stated that he wishes this had never happened and that the proper channels had been followed.

Mr. Henke asked Mr. Sullenger if there was anything that can be agreed upon in relation to the building. Mr. Sullenger stated that there is no way the building can be moved. Mr. Henke asked Mr. Sullenger if he would agree to some sort of screening fence and/or landscaping to soften the building. Mr. Sullenger asked if a screening fence could be built on the Fritz's east boundary. Mr. Sullenger stated that if he were to sell his property it might make it easier to sell with screening but he does not know. Mr. Sullenger stated that there is also the fact that the Fritz's are running a business out of the building. Mr. Henke stated that is a separate issue. Mr. Sullenger stated that this situation is so convoluted and wrong in so many areas, and he does not understand

why the County did not do their due diligence. It also seems the City had opportunities to stop it. Mr. Sullenger stated that his neighbor hates him now but he is also a victim in this situation. This would never have happened had it gone through the City first. Mr. Henke stated that he is trying to look at this situation constructively and productively and if there is something that can be done. Mr. Sullenger stated that a privacy fence around the boundaries might help, but he also has another concern and that is his power line to his house. Mr. Sullenger stated that his power service and cable line goes across the Fritz's driveway, and he is worried about it being snagged and pulled out. Mr. Sullenger stated that his cable line has been pulled out while construction was going on and wanted to know who would be responsible if the power line was pulled out. Mr. Sullenger asked if a watershed study had been performed. Mr. Sullenger stated that he had spoke to Mr. Fritz but he was naïve because he thought Mr. Fritz had a permit and never complained.

Janelle Robison, 1908 West 91st Street, Jenks, OK; stated she was notified by the Board of Adjustment via a letter which is her invitation to attend this meeting. Ms. Robison stated that she lives across the street from Mr. Fritz. Ms. Robison stated that nothing has been said about water control or a study on the water flow, and she is interested in what approval was given. Ms. Robison stated that she has been lead to believe that Mr. Fritz did an excellent job on the type of concrete, because it is supposed to absorb water. Ms. Robison stated that everything north of the Fritz property and the Sullenger property is up hill which is the Tulsa side of the street. Mr. Henke stated that the Board does not get into water issues. Ms. Robison stated that she personally spoke with Terry Creecher and he was presented as the County Inspector. Ms. Robison asked him why this situation happened, and he told her that he had looked at the maps in error and that he had given the wrong piece of property as the description of the Fritz property. The neighbors want to know why, if the Tulsa County and the Tulsa City codes are the same, when Tulsa County looked at the application and looked at the site plan why did they not make the building smaller.

Mr. Henke asked Ms. Robison if she was asking if the City and County follow the same rules. Ms. Miller stated that the Codes are not the same; maybe 30 years ago they were almost the same but when the County used the property number that led them to a property with AG zoning. That is an entirely different zoning than RS-3 so even if the Codes were the same the County was still looking at the property as an agriculturally zoned property versus the RS.

Ms. Robison asked if the County specified whether any building that is to be built has to be set back farther away from the street than what the existing building is located. Ms. Miller stated that for AG zoned property there is no limitation on building size or the location for an accessory building. As for location of an accessory building in RS the County does not allow an accessory in a side setback by right. Ms. Moye agreed with that statement. Ms. Miller stated that the subject accessory building is in the side setback immediately next to the house in RS. Mr. Henke stated that in that scenario if had not been determined that this was a City of Tulsa property Mr. Fritz would be in front of the County Board of Adjustment because the County arguably approved this in

error. Ms. Miller stated that in the County there is Harry Creech and Terry West, and staff met with Harry Creech and Terry West and Teresa Tosh. Ms. Robison stated that it may have been Harry Creech. Ms. Miller stated that the County personnel were very clear that they should have double checked when questioned, so in retrospect they should have looked at the property more closely.

Ms. Robison stated that she believes that Mr. Fritz did not set out to do anything intentionally to any of the neighbors; she personally would have asked the neighbors for their ideas and thoughts. The Morton Building personnel represented Mr. Fritz and they made the errors in conjunction with the County. When the City of Tulsa entered the picture they were only going by what the County had already approved. It is understandable how things came about but it still does not change the elephant in the room. Ms. Robison asked if Mr. Fritz will have to come before the Board for a zoning change because he does park his truck in front of the building; can he make it a commercial property in the middle of all the acreages.

Rebuttal:

Mr. Andy Fritz came forward and stated he has a City of Tulsa watershed permit. Mr. Fritz had page 2.11 placed on the overhead projector showing his property in relation to Mr. Sullenger's property and the condition of Mr. Sullenger's property.

Mr. Henke stated that he feels Mr. Fritz's neighbors have been very gracious and asked Mr. Fritz what he is willing to do right now. Mr. Fritz stated that he intends to fully fence the property with driveway gates ranging from four feet to eight feet according to City Code. He does not want to be seen. He does not want the neighbors to see what he is doing with the building or see them playing in the driveway. Mr. Henke asked Mr. Fritz if he was agreeable to the condition of an eight foot solid wood fence if the Board were to approve the request. Mr. Fritz stated that he plans to add as much barrier landscaping as possible because he does not want to be seen. Mr. Fritz stated he is not running a business. He does not want people to know that he is there. He wants to be left alone and live his life in harmony, hopefully with the neighbors. Mr. Fritz stated he will never make this a commercial operation. It is a building to support his business. It houses his extra vehicles, his four wheelers, his wood stakes and his flagging. There is no business being run out of the building. It is an open store room and that is all it is.

Mr. Henke asked Mr. Swiney about the unconnected driveways under the old Code versus the new Code. Mr. Swiney stated that the unconnected driveways are not permitted under the old Code, but it is permitted under the new Code. That could be a persuasive argument for the Board this afternoon, but the Board is not bound by the new Code in this application. Ms. Miller stated that it seems like the difference is that Mr. Fritz has already entered the zoning permit process where Agenda Items #4 and #5 had not. Mr. Henke asked Ms. Miller if it was her opinion that the Board needs to act on the second Variance and whether the Board can use the new Code as guidance. Ms. Miller answered affirmatively.

Mr. Fritz stated that he would prefer not have it made conditional as part of the Variance because he believes it is his right to fence and landscape as he sees fit on his property. He does not think that devaluing the Sullenger property is a valid argument. Things have changed from what they were last year; it is not like it has been for the last 27 years. He did not set out to cause a burden to the neighborhood. He built the best building he could to make everyone happy and everyone seemed to be happy with it prior to the last meeting. He understands it is a large structure. He wants his privacy. He does not the Sullenger's or anyone across the street to be able to see what is being done.

Mr. Henke asked Mr. Fritz if he was prepared to install a fence. Mr. Fritz stated that he was just waiting to get through this process to make sure the building did not have to come down before any more improvements were made to the property.

Mr. Henke asked Mr. Fritz what he thinks a reasonable time would be to erect a fence. Mr. Fritz stated that given the non-typical weather patterns, weather permitting it would be as soon as possible.

Mr. Fritz stated that not once did any of his neighbors knock on his door to see what was going on. All of this was done on hearsay and third party. Mr. Henke stated that it seems that there have been a lot of errors made, but the first person to make an error was you (Mr. Fritz). Mr. Fritz agreed. Mr. Fritz stated that can be said but the information he presented to the County was 100% accurate; he did not make an error. Mr. Henke stated that Mr. Fritz owns the property and he is the one who erected the building so it is ultimately Mr. Fritz's responsibility. Mr. Fritz agreed. Mr. Henke stated that he does not disagree that there was a chain of events that seemed to be a comedy of errors because there have been a lot of things that have slipped through the cracks or overlooked. In the spirit of trying to work something out, and he gets the sense from the neighbors that they feel like they have been negatively impacted by what has been done, and he feels bad about that. But the neighbors may have been injured by having a big giant red building right next to their house or across the street. All that being said, in his humble opinion, it would be good if everyone could work in the spirit of reaching an agreement and chalk it up to an error by all parties involved.

Mr. Fritz had photos placed on the overhead projector to show the rear property line of his property and abutting Mr. Sullenger's property. Mr. Fritz stated that he would object to fencing the rear property line because there is no one behind him. Mr. Henke reminded Mr. Fritz that he had stated earlier that he was going to fence the entire property with four feet and eight feet fencing. Mr. Fritz stated that fencing the side yard make 100% sense between him and Mr. Sullenger, but to erect a barrier at his expense between himself and Mr. Sullenger to block the view displayed in the photo would be his (Mr. Fritz) prerogative because he would be the one to want the fence. The fact that he has a \$150,000 building devaluing Mr. Sullenger's property is a little bothersome when there is a dilapidated shed, a motor home that had been there for 20+ years, four trailers and one of those that is within five feet of his fence with a tree growing up

through it is what he views. Mr. Fritz stated that he has never said anything about that view. He lives with it.

Jennifer Fritz, 2017 West 91st Street, Tulsa, OK; stated that there are landscaping plans and she is doing it herself. She is collaborating with a friend to have different kinds of plantings. Ms. Fritz stated that financially she and her husband cannot afford to do the entire back portion this year but there are plans for a privacy fence and landscaping. Ms. Fritz stated that if a fence is a condition she would like it made clear that it will be only between the Sullenger property and their property for now. She has plans to soften the concrete also.

Comments and Questions:

Mr. Flanagan stated that he does not think Mr. and Mrs. Fritz will scrimp on the landscaping, because their home and building are very nice.

Board Action:

On **MOTION** of **FLANAGAN**, the Board voted 3-0-1 (Henke, Flanagan, Snyder “aye”; no “nays”; White “abstaining”; Van De Wiele absent) to **APPROVE** the request for a **Variance** to increase the maximum permitted square footage of detached accessory buildings on an RS-3 lot (Section 402.B.1.d); **Variance** to allow two unconnected driveways in the required front yard in the RS-3 District (Section 1301.C). The hardship is the extraordinary mix-up that occurred when Tulsa County issued a permit in error. This approval is based on the applicant erecting an eight foot fence along the east property line four months from today and landscaping to be installed over the next 12 to 18 months. 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 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; for the following property:

**BEG 25N OF SWC SE SE TH N208.7 E208.7 S208.7 W208.7 POB SEC 15 18 12,
CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

Mr. White re-entered the meeting at 2:16 P.M.

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NEW APPLICATIONS

22020—Four Seasons Sunrooms – Jana McBride

Action Requested:

Variance of the required rear yard from 20 feet to 16.3 feet to permit an addition to a non-conforming building in the RS-3 District (Section 403). **LOCATION:** SE/c of South Newport Avenue and East 16th Street South **(CD 4)**

Presentation:

Orpha Harnish, 3147 South Urbana, Tulsa, OK; stated the request is to allow the sunroom addition to go to the edge of the existing house and not be four feet short.

Jana McBride, Four Seasons Sunroom, 5123 South 92nd East Avenue, Tulsa, OK; stated the existing duplex was built in the 1950s is a non-conforming structure. It is 16.5 for the rear setback and she would like to be able to keep that same setback. Ms. McBride stated the Preservation Committee has approved the structure but the City of Tulsa told her she still needs to be approved for a Variance because it is a new structure.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **SNYDER**, the Board voted 4-0-0 (Henke, Flanagan, Snyder, White “aye”; no “nays”; no “abstentions”; Van De Wiele absent) to **APPROVE** the request for a Variance of the required rear yard from 20 feet to 16.3 feet to permit an addition to a non-conforming building in the RS-3 District (Section 403). The Board has found that the structure is already a non-conforming structure and the Tulsa Preservation Committee has granted their approval. 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:

W 95 LTS 21, 22, 23 and 24, BLK 8, MORNINGSIDE ADDN, an addition to the City of Tulsa, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

22023—Ron Brown

Action Requested:

Special Exception to allow an office use on an RM-2 zoned lot (Section 401, Table 1); Variance to reduce the required parking to 3 spaces (Section 1211.D).

LOCATION: 1445 South Carson Avenue West (CD 4)

Presentation:

Ron Brown, 320 South Boston, Suite 1130, Tulsa, OK; stated that there are lots of converted residences in the area. Under the RM-2 he would request a Variance and a Special Exception so he can build an office. Mr. Brown stated that he is the principal owner of Brown Law Firm and he would like to have a law office on the property. At any given time he will only have two or three clients come into the office. Mr. Brown stated that he has spoken with the property manager for Boulder Towers who owns most of if not all of the parking lots around the subject property. Mr. Brown stated that he will be able to lease space from Boulder Towers for the employees of the Brown Law Firm. If the strict guidelines of the Zoning Code are followed half of the lot will need to be used for parking and the other would be a small office that would not be usable. The older structures in the neighborhood, most of which are two-story, are considered rectangular and straight up and down. That is the style of building he wants to erect on the subject property. If a small building were to be on the lot it would detract from the neighborhood. Mr. Brown stated that he does not think he is asking for anything more than what has been given to others in a building that has already been built as a residence; it is only that he falls under different rules because it will be a new building.

Mr. Henke asked if one of the three parking spaces on the site were a handicapped space. Mr. Brown stated it will be if it is required.

Mr. Henke asked Mr. Brown if the size of the building he is considering 3,285 square feet. Mr. Brown stated that square footage would be the maximum for the first floor. He would like to build between 4,000 and 4,500 square feet total.

Mr. Henke asked Mr. Brown how many employees he has. Mr. Brown stated that he has three employees plus one intern currently and he plans to expand to 10 or 12 employees. Mr. Henke stated that by expanding the number of employees means an expansion of clients which means possible more than three clients at one time. Mr. Brown stated that is a possibility but there would be instructions to direct parking to the other areas.

Mr. Henke asked Mr. Brown to elaborate on the discussion with Boulder Towers. Mr. Brown stated that parking to the right of the subject property is owned in part by Boulder Towers but they have not committed as to whether they have spaces in that lot. Boulder Towers has informed him that the parking lot south of 15th Street has space

available. Mr. Henke asked Mr. Brown if he was referring to the parking lot east of the condominiums. Mr. Brown answered affirmatively.

Mr. Henke stated that Mr. Brown's clients would not park on 15th Street. They will park either in the parking lot or to the east of the subject property or park on Carson Street. Mr. Brown stated the clients could park in the alleyway. Mr. Henke stated that he did not think anyone could park in the alley so the alleyway is not an option. Mr. Brown stated that he could instruct people not to park on 6th Street.

Mr. Swiney asked Mr. Brown if he had discussion with Boulder Towers. Mr. Brown stated that he had discussions with the property manager for Boulder Towers. Mr. Swiney asked Mr. Brown if he had entered into an agreement with them. Mr. Brown stated that he had not. Mr. Swiney asked Mr. Brown if he was negotiating a contract with Boulder Towers. Mr. Brown stated that he would not be negotiating a contract until he receives approval for his request.

Mr. Henke stated that the Board does not typically grant relief unless there is something in place to say negotiations or arrangements have been made for necessary off-site parking, so this request may be a little premature. Mr. Brown asked what would be required because he does not feel comfortable entering into a contract. Mr. Henke stated Mr. Brown would not have to sign a contract but if there was some indication that Boulder Towers would provide 13 spaces, which is what is required for 4,500 square feet, would be helpful to the request.

Interested Parties:

Sam Joyner, 1513 South Carson Avenue, Tulsa, OK; stated he is a retired federal judge and he lives across the street and south of the subject property. He has been active in a variety of attempts of figuring out what to do with the subject property. This request appears to not be an appropriate use in his opinion. It violates the residential nature of the neighborhood and there is not enough room for parking. Mr. Joyner stated that if Mr. Brown is speaking of parking across 15th Street it is inappropriate as a designated parking area for the building, because 15th Street is a busy street. Mr. Joyner stated that he opposes this application.

Brent Garrett, 245 West 16th Street, Tulsa, OK; stated he is here in opposition to this request. The subject property is located in the Carlton Place neighborhood which is listed on the National Register of Historic Places since 2007. It is a small residential district covering one and a half blocks and originally was three blocks. The eastern half was demolished for commercial development years ago and the remaining homes are bungalows and craftsman that were built in 1910 to 1915. Carlton is a place in a larger downtown neighborhood known as Riverview Neighborhood Association which he is an elected Board member of and he is speaking on behalf of the neighbors today. There are four other districts within Riverview: Stonebraker Heights, Carlton Place, Buena Vista, and Riverview which are all on the National Register of Historic Places since 2007. Downtown neighborhoods have struggled over the years to survive and over the last 20 years there has been a major comeback. A resurgent of young families moving

back into the single family homes and the neighbors concerns are that there are enough law offices in the neighborhood. The neighbors are trying to turn the area back into residential and law offices are highly controversial at times, specifically divorce and child custody cases. In the past there have been public displays of confrontations and disturbances which he has seen from his own porch. That is not suitable for children in the neighborhood. Mr. Garrett thinks this type of business is detrimental to the neighborhood in general and that it is injurious to the families that live there. The City adopted the Comprehensive Plan in July of 2010 and it was approved by the City Council. Since the adoption there have been no Special Exceptions granted to operate a business in the area; in the entire Riverview neighborhood. No zoning changes have been approved. All of this is due to the stakeholders in the area that are trying to keep the area residential. A lot of time and money has been spent on these efforts. The Comprehensive Plan states it is specifically designed to enhance the qualities of older neighborhoods and looking for new ways to preserve the character and quality of life. Carlton Place as well as Riverview has areas of stability and growth and welcome growth in the designated areas of growth, and the neighbors strongly oppose this request. Mr. Garrett had a map placed on the overhead projector showing the designated areas of growth and stability; the property is located in an area of stability. The area on the map designated as an area of stability is 90% single family houses. The applicant listed previous relevant actions and the most recent was ten years ago which was five years prior to the adoption of the Comprehensive Plan. Mr. Garrett stated that in case #BOA-21519 in 2013 was denied a Variance to allow office use. The Board also denied the parking requirement from 16 down to 5 spaces. The intended use for the property in that case was a law office with two attorneys and three staff; that subject property 4,500 square feet and sat on a larger lot. It is very similar to what is being requested in today's case. BOA-21519 was appealed in District Court and denied. The Court ruled that the land was not in harmony with the spirit and intent of the Zoning Code because of the resurgent of single family residential homes in the neighborhood. This Board approved a Variance for today's subject property in April 2015 for the south yard setback, the setback on 15th Street and a Variance to increase the building height which was to permit a three unit multi-family structure. The parking and the traffic would be an issue and a burden for the neighborhood, especially the residences on Carson between 14th and 15th Streets. Mr. Garrett stated that he does not feel that this is in harmony with the spirit and intent of the Zoning Code and strongly believes this project is injurious to the neighborhood. Mr. Garrett respectfully requests the Board deny this request.

Demetrius Bereolos, 1929 South Cheyenne, Tulsa, OK; stated he is here today to speak in opposition to the granting the Special Exception and the Variance. When speaking of a Variance there is to be extraordinary and exceptional conditions and none exist at 1445 South Carson. When speaking about granting a parking Variance the discussion is to determine whether it will cause a detriment to the public good. The detriment will come from the parking issue that has been raised, and the pressure that it is going to put on the on-site parking because there is a maximum of 30 parking spaces which most are being consumed by the residents and by their guests. If this development occurs the first 100 feet of parking that is closest to the office is not going

to be available because of the development next door due to the driveways and the right of way. If the Board looks at a broad area it will be found that in terms of developments of offices that have been converted from houses the Board will find at least nine examples in the area where someone could actually meet the requirements that are spelled out in the Zoning Code, whether it be the old code or the new code. The reason those nine could meet the requirements is because they were cognizant of the size of the lot and cognizant of what they could do with the lot. When Special Exceptions are discussed what is to be discussed is what is injurious to the neighborhood. Again, this is another attempt to encroach into a residential neighborhood. Mr. Bereolos pleads with the Board to stand with the neighbors and to deny the Special Exception. There is plenty of commercial development in the area so in terms of balanced land use there is more than enough commercial heavy and additional or existing encroachment. Mr. Bereolos asks the Board to deny the Special Exception because it is injurious to the neighborhood and the Variance because of the pressure it will place on the neighborhood and there isn't an apparent clear agreement in an attempt to solve the parking issue. Mr. Bereolos stated that in Chapter 5 of the Zoning Code the purposes of residential zoning districts are primarily intended to create, maintain and promote a variety of housing opportunities for individual households and to maintain and promote the desired physical character of existing and developing neighborhoods. There is an existing neighborhood. The realtor selling the property makes a reference on her sign that the property can be custom built to either single family or condominium needs. This is pretty clear that in the thought process someone said to consider going back to the original roots and placing a single family dwelling on the lot. Mr. Bereolos encourages the Board to deny the application.

Rebuttal:

Mr. Ron Brown came forward and stated that he is not here to make any enemies and he does not know the history of the property. He thinks the Zoning Code anticipates that there could office use on the property because of the Special Exception. It is a vacant lot and there is no single family residence being taken away. The parking issue can be addressed with the condition that all his employees have a signed contract for parking and that he instruct the clients about where to park. The site plan does have parking designated on the east side so there should not be any parking on Carson Street. He believes there is a way to approve his application.

Comments and Questions:

Mr. White stated this is the fourth time the Board has heard a request on this particular tract. He understands Mr. Brown's desire to erect a building on the lot, but the only way he could approve such a request is if he had a firm contract with the property owner directly east and across the alley for the required parking spaces.

Mr. Flanagan stated he could support the application if the applicant could get a contract for the parking spaces.

Mr. Henke stated that he believes this is not necessarily the best for the area because of the intensity of the parking. In the past the Board has had questions about where

people are going to park while utilizing the subject property. Mr. Henke stated that at the proposed 4,500 square feet there has to be parking provided therefore he could not support this request.

Ms. Snyder stated that most of the Board's discussions regarding this piece of property has centered on the parking. The Board denied a request that was residential because of the parking and the Board did approve a residential request because it proven the parking could fit. But the arguments about this being a neighborhood are really good and it is the last neighborhood in that area and if an office were to go in it would be bothersome. The fact that there is not enough parking she cannot approve the request based on what has been done in the past with the subject property.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Flanagan, Snyder, White "aye"; no "nays"; no "abstentions"; Van De Wiele absent) to **DENY** the request for a Special Exception to allow an office use on an RM-2 zoned lot (Section 401, Table 1); Variance to reduce the required parking to 3 spaces (Section 1211.D) finding that the hardship is self imposed and the request is out of character and incompatible with the area; for the following property:

LT 36 BLK 2, CARLTON PLACE, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

22024—Ed Martinez, Jr.

Action Requested:

Variance of frontage requirement from 100 feet to 12 feet (Section 703, Table 2) to allow a Lot-Split. **LOCATION:** 3121 South Yale Avenue East **(CD 5)**

Presentation:

Ed Martinez, 3125 South Yale, Suite A, Tulsa, OK; stated he owns the subject property and the property is about 150 feet wide by 250 feet deep. When he purchased the property in 2003 it was housing and the donut shop. His intention on the purchase was to build an office building which he did. His situation today is to simplify his life. He has an opportunity to sell the donut shop building. The donut shop will be sold to the same family that is currently operating it and has operated it since 1980. The challenge is that in order to sell he has to split the lot and because of the composition of the lot being 150 feet wide and 200 feet deep, the requirement that the donut shop have 100 feet will not be met. What he proposes is the lot split that gives the donut shop 12 feet on Yale with a perpetual parking agreement. He has had several calls from the neighborhood and they understood what was being proposed they were happy.

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, Flanagan, Snyder, White “aye”; no “nays”; no “abstentions”; Van De Wiele absent) to **APPROVE** the request for a **Variance** of frontage requirement from 100 feet to 12 feet (Section 703, Table 2) to allow a Lot-Split, per plans 7.9 and 7.10. The Board has found that the unusual configuration of the two plans are necessary to separate the land and continue the two buildings in question so the transfer of the property can occur while still having access to South Yale. Finding by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

S 15 LT 2 ALL LT 3 BLK 1, YORKSHIRE ESTATES, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

Ms. Miller left the meeting at 2:58 P.M.

22025—John Argabright

Action Requested:

Variance of the required front setback in the RS-3 District (Section 403, Table 3).

LOCATION: 1241 East 27th Place South **(CD 4)**

Mr. White recused at 3:01 P.M.

Presentation:

Nathan Cross, 502 West 6th Street, Tulsa, OK; stated this case is a classic hardship. His client purchased the house in 2010 and at the time he purchased the house had the rock face structure on the outside. He believes the rock face was added in 2005 and has no idea whether it was permitted at the time. In the course of negotiating the sale of the property to another party a mortgage inspection survey was performed by White Surveying showing the addition, the rock face and porch that were added on, encroaches over the front side building line. As a condition of closing the real estate transaction the purchaser has requested that relief be obtained in a form of a Variance from the front setback of 25 feet in the RS-3 District. The one issue with the site plan is that the 16.7 feet that was requested pulls from the property boundary and the setback

is tabulated from the midpoint of the street. The survey states there is a 25 foot right-of-way so his request is to make it 16.7 plus 12.5 feet for a total of 29.2 from the midpoint of the abutting right-of-way.

Interested Parties:

Joe Staskal, 1235 East 27th Place, Tulsa, OK; stated he has lived in his house for many years which immediately next door to the subject property. Mr. Staskal stated the structure in question has been in existence for at least five years and he does not necessarily like the structure. It interferes with the light, the air flow and his view. The neighborhood is a zero lot line neighborhood so people try to get along. Mr. Staskal stated that he would like to take dump truck and some workers and take down the two columns and the second story of the porch structure. He can see why there is a hesitation from the Board to raze an existing structure. He would be agreeable, if it is in the Board's power, that the existing structure remain as an open structure.

Mr. Henke stated he believes the Board has the power to place such a condition on the request if it were to be approved, and Mr. Cross's rebuttal would be amenable to the request.

Rebuttal:

Mr. Nathan Cross came forward and stated he does not represent the purchaser, he has spoken with the realtor who is in attendance today and Mr. Cross does not think there are any plans in the future to make an additions to the porch or add on to the second story.

Comments and Questions:

None.

Board Action:

On **MOTION** of **SNYDER**, the Board voted 3-0-1 (Henke, Flanagan, Snyder "aye"; no "nays"; White "abstaining"; Van De Wiele absent) to **APPROVE** the request for a **Variance** of the required front setback in the RS-3 District (Section 403, Table 3), subject to "as built" as shown on 8.6 as evidence for the openness of the structure and 8.7 and 8.9. 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 17 LESS BEG SELY COR TH ON CRV RT 21.7 NWLY67.1 NWLY48.9 SELY114.54 POB BLK 16, SUNSET TERRACE, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

Mr. White re-entered the meeting at 3:10 P.M.

OTHER BUSINESS

None.

NEW BUSINESS

None.

BOARD MEMBER COMMENTS

There being no further business, the meeting adjourned at 3:11 p.m.

Date approved: 2/9/16

Frank X. [Signature]
Chair