

**BOARD OF ADJUSTMENT**  
**MINUTES** of Meeting No. 1171  
Tuesday, October 11, 2016, 1:00 p.m.  
Tulsa City Council Chambers  
One Technology Center  
175 East 2<sup>nd</sup> Street

<b>MEMBERS PRESENT</b>	<b>MEMBERS ABSENT</b>	<b>STAFF PRESENT</b>	<b>OTHERS PRESENT</b>
Van De Wiele, Chair White, Vice Chair Flanagan, Secretary Back Bond		Miller Moye Sparger Foster	Blank, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Thursday, October 6, 2016, at 10:43 a.m., as well as at the Office of INCOG, 2 West Second Street, Suite 800.

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

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

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**MINUTES**

On **MOTION** of **WHITE**, the Board voted 3-0-2 (Back, Bond, White "aye"; no "nays"; Flanagan, Van De Wiele "abstaining"; none absent) to **APPROVE** the **Minutes** of the September 27, 2016 Board of Adjustment meeting (No. 1170).

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**UNFINISHED BUSINESS**

**22129—Patrick M. Fox**

**Action Requested:**

Special Exception to allow a medical office in the RM-2 District (Section 5.020, Table 5-2); Variance to reduce the required building setback from the abutting R

zoned lots occupied by a residence (Section 5.030-B). **LOCATION:** 1715 South Peoria Avenue East (CD 4)

**Presentation:**

The applicant has requested a continuance to October 25, 2016 to allow additional time for a determination from the Preservation Commission.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Back, Bond, Flanagan, Van De Wiele, White “aye”; no “nays”; no “abstentions”; Flanagan, Van De Wiele absent) to **CONTINUE** the request for a Special Exception to allow a medical office in the RM-2 District (Section 5.020, Table 5-2); Variance to reduce the required building setback from the abutting R zoned lots occupied by a residence (Section 5.030-B) to the October 25, 2016 Board of Adjustment meeting; for the following property:

**LT 14 BLK 24 & 10' VAC ALLEY; LT 13 BLK 24 & 10' VAC ALLEY, ORCUTT ADDN, City of Tulsa, Tulsa County, State of Oklahoma**

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**NEW APPLICATIONS**

**22148—Eller & Detrich – Lou Reynolds**

**Action Requested:**

Special Exception to permit wholesale distribution and indoor/outdoor storage of equipment and materials (Section 15.020); Variance to permit the existing wrought iron fence and chain link fence (Section 40.410 and Section 65.060); Variance to permit a gravel parking area (Section 55.090); Variance from the required pedestrian circulation system (Section 55.130); Variance for the requirement that the site contain accessible parking facilities (Section 55.110); Variance to reduce the required building setbacks from the R zoned lot (Section 15.030); Variance to permit outdoor storage within 300 feet of the abutting R District (Section 15.040-A).

**LOCATION:** 401 South Memorial Drive East (CD 3)

**Presentation:**

The applicant requests a continuance to the November 8, 2016 to allow the re-zoning to take effect.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Back, Bond, Flanagan, Van De Wiele, White “aye”; no “nays”; no “abstentions”; Flanagan, Van De Wiele absent) to **CONTINUE** the request for a Special Exception to permit wholesale distribution and indoor/outdoor storage of equipment and materials (Section 15.020); Variance to permit the existing wrought iron fence and chain link fence (Section 40.410 and Section 65.060); Variance to permit a gravel parking area (Section 55.090); Variance from the required pedestrian circulation system (Section 55.130); Variance for the requirement that the site contain accessible parking facilities (Section 55.110); Variance to reduce the required building setbacks from the R zoned lot (Section 15.030); Variance to permit outdoor storage within 300 feet of the abutting R District (Section 15.040-A) to the November 8, 2016 Board of Adjustment meeting; for the following property:

**TRACT 1:**

**A TRACT OF LAND IN THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER (SW/4 NW/4) OF SECTION ONE (1), TOWNSHIP NINETEEN (19) NORTH, RANGE THIRTEEN (13) EAST OF THE INDIAN BASE AND MERIDIAN IN TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE UNITED STATES GOVERNMENT SURVEY THEREOF, MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

**BEGINNING AT A POINT 210 FEET NORTH AND 50 FEET EAST OF THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER; THENCE NORTH 276 FEET; THENCE EAST 577.40 FEET; THENCE SOUTH 276 FEET; THENCE WEST 577.40 FEET TO THE POINT OF BEGINNING.**

**TRACT 2:**

**A TRACT OF LAND THAT IS PART OF OIL CAPITAL HEIGHTS; A SUBDIVISION IN THE CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA ACCORDING TO THE RECORDED PLAT THEREOF; SITUATED IN THE NORTHWEST QUARTER (NW/4) OF SECTION ONE (1), TOWNSHIP NINETEEN (19) NORTH, RANGE THIRTEEN (13) EAST OF THE INDIAN BASE AND MERIDIAN, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE UNITED STATES GOVERNMENT SURVEY THEREOF, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

**BEGINNING AT THE SOUTHWEST CORNER OF SAID OIL CAPITAL HEIGHTS; THENCE NORTH 01°21'22" WEST ALONG THE WESTERLY LINE OF OIL CAPITAL HEIGHTS FOR 456.13 FEET TO THE MOST WESTERLY NORTHWEST CORNER OF**

SAID OIL CAPITAL HEIGHTS; THENCE NORTH 88°35'43" EAST ALONG SAID NORTHERLY LINE FOR 190.93 FEET; THENCE SOUTH 01°21'22" EAST PARALLEL WITH SAID WESTERLY LINE FOR 456.43 FEET TO A POINT ON THE SOUTHERLY LINE OF OIL CAPITAL HEIGHTS; THENCE SOUTH 88°41'11" WEST ALONG SAID SOUTHERLY LINE 190.93 FEET TO THE POINT OF BEGINNING OF SAID TRACT OF LAND.

THE ABOVE DESCRIBED TRACT OF LAND CONTAINING 87,119.98 SQUARE FEET OR 2.000 ACRES, MORE OR LESS, City of Tulsa, Tulsa County, State of Oklahoma

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**UNFINISHED BUSINESS**

**22133—Wallace Engineering – Jim Beach**

**Action Requested:**

Variance of the required off-street parking spaces for retail sales in the CS District from 70 to 48 (Section 55.020). **LOCATION:** 2432 East 51<sup>st</sup> Street South **(CD 9)**

**Ms. Back and Mr. Van De Wiele recused and left the meeting at 1:06 P.M.**

**Presentation:**

**Robert Getchell**, 100 West 5<sup>th</sup> Street, Suite 1100, Tulsa, OK; stated the application was originally submitted by Jim Beach of Wallace Engineering on behalf of Parkhill & Parkhill, LLC, the owner of Parkhill Liquor and Wines located at 51<sup>st</sup> and Lewis. The Parkhill family has operated the business at the southeast corner of 51<sup>st</sup> and Lewis since 1963. They have built a strong family owned business with a loyal customer base. The success of the business is the decades long presence at its current location. In the past several months circumstances beyond the Parkhill's control dictates that the business must move. The landlord has informed them that the lease for the space within the shopping center will not be renewed. The relocation alternative offered by the current landlord was not economically feasible for the Parkhills. They opted to purchase a one acre tract immediately to the east of their current location. This option will allow the Parkhills to stay in the same area that have been identified with for over five decades. The future site has challenges. It required a rezoning which has been approved. It required a platting of the property which has been approved. The last remaining step is today's application for the Variance. Parkhill is seeking the Variance to alleviate an unnecessary hardship that will be caused by the strict enforcement of the Code's requirement. A Variance is intended to provide relief when the requirements of the Zoning Code render property very difficult or impossible to put to a reasonable use because of unique characteristics and such conditions exist on the subject property justifying approval of the requested Variance. The shape of the subject lot, the

topographical conditions and the shape of the lot all make it necessary or have made it necessary for the Parkhills to do certain things to accommodate the footprint of the building. An existing drainage easement in the southeast corner of the subject property has been retained and that has dictated the building could not be moved any farther back on the lot. In accommodating the rezoning and the platting of the subject property it was discovered that there had never been a dedication of additional right-of-way for 51<sup>st</sup> Street beyond the original statutory section line easement. Between that and a water line that is located on a non-existent easement there was additional roadway dedication prior to the 16 foot easement on the north side all of which required the building to be pushed back southward from 51<sup>st</sup> Street. This eliminated six parking spaces that were already on the plan while under conception. The landscaping that is required on the east boundary limits the ability to use the east property line for parking. The west property line slopes very steeply towards Lewis Avenue which makes it difficult to move the building eastward. Parking requirements are in place to assure there are sufficient onsite parking to meet peak vehicle demands. Parkhill submits that the literal enforcement of the Code is not necessary to achieve the objective in this instance based on 50 years of experience in operating their store. Parkhill believes that they can represent to the Board that the customers spend a limited amount of time in the store with the average visit being about ten minutes per customer. The parking situation is not one where people spend more than 15 minutes in the store at any particular time. The Parkhills did an analysis of their transaction pattern and the average transaction is typically less each day than the number of parking spaces available. The Zoning Code for parking is based on the square footage of the building. The building is approximately 20,323 square feet, however, approximately 3,000 square feet will not be for public retail use. In addition, a lot of the floor area is used for storage of inventory even of the retail space. Both of these things indicate that the application of the strict formula of the Zoning Code would be somewhat burdensome for Parkhill at the subject location. The conditions at the site are unique and this is an infill development that has issues not likely to exist along the remainder of the 51<sup>st</sup> Street corridor in the area. Parkhill has maximized the lot for every available spot to be used for parking. If the Variance is approved it will not alter the essential character of the neighborhood or substantially or permanently impair use or development of adjacent property and will not cause substantial detriment to the public good or impair the purpose, spirit or intent of the Zoning Code.

Mr. White asked Mr. Getchell if the store ever ran 70 customers at a time based on the traffic analysis performed. Mr. Getchell stated the store as it currently exists only has 60 spaces in front of the store and based on the generated reports the probable high might be more than 48 customers in the store over a course of an hour. But there are probably not 48 customers in the store at any one given time in the day.

**Interested Parties:**

**Greg Guerreo**, 1120 South Boston Avenue, Suite 100, Tulsa, OK; stated he is the managing member for the Atlanta Terrace Apartments which is the property immediately to the east of the subject property. He is familiar with Parkhill and it is his understanding that the amount of business they have during peak periods fill up the

current parking space. Mr. Guerreo stated that he believes the apartment parking for residents will probably be the overflow parking for Parkhill if the parking is not adequate for their needs. Mr. Guerreo stated that the ingress and egress for the subject property, along with the apartments, is terrible. Turning to the right to go east is very easy but people turning to the west have a very difficult time. If the store fills up their entire parking lot the customers will overflow to the apartments. He would echo the objections raised by Venture Properties not because Parkhill is not a good business but because he does not want the apartments to carry the overload of customers.

Mr. White asked Mr. Guerreo if he thought there would still be a problem entering and exiting the property regardless of what type business went on the property. Mr. Guerreo answered affirmatively. Mr. Guerreo stated there is a problem now but the apartments do not have any room to modify their ingress and egress, but if Parkhill could move their ingress and egress might help.

**Rebuttal:**

**Robert Getchell** came forward and stated that it is presumptuous to assume the apartments are going to be the overflow parking lot, because there is a fence that comes down the entire common boundary line. People will not pull into the apartment complex, drive down the driveway to find an open space and then walk all the way back to 51<sup>st</sup> Street then walk back halfway down the property to the entrance of the store is unlikely to occur. In regards to the difficulty getting in and out of the subject property is not different than what already exists. The driveway for the existing Parkhill store is not much farther down the road and there is a challenge in trying to turn westward from the north driveway. The mentioned problem is probably a common problem to virtually every arterial street in Tulsa so he does not think there will be a new or unique kind of problem created.

**Comments and Questions:**

Mr. Bond understands the interested parties concerns but based on the information provided by the applicant it does not sound like the parking would be full for long periods of time so it would not create a hardship for the neighbor.

**Board Action:**

On **MOTION** of **FLANAGAN**, the Board voted 3-0-2 (Bond, Flanagan, White “aye”; no “nays”; Back, Van De Wiele “abstaining”; Flanagan, Van De Wiele absent) to **APPROVE** the request for a Variance of the required off-street parking spaces for retail sales in the CS District from 70 to 48 (Section 55.020). The Board determines that the following facts, favorable to the property owner, have been established:

- a. That the physical surroundings, shape, or topographical conditions of the subject property would result in unnecessary hardships or practical difficulties for the property owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;
- b. That literal enforcement of the subject zoning code provision is not necessary to achieve the provision’s intended purpose;

- c. That the conditions leading to the need of the requested variance are unique to the subject property and not applicable, generally, to other property within the same zoning classification;
- d. That the alleged practical difficulty or unnecessary hardship was not created or self-imposed by the current property owner;
- e. That the variance to be granted is the minimum variance that will afford relief;
- f. That the variance to be granted will not alter the essential character of the neighborhood in which the subject property is located, nor substantially or permanently impair use or development of adjacent property; and
- g. That the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of this zoning code or the comprehensive plan; for the following property:

**N/2 W/2 E/2 NW NW SEC 32 19 13, City of Tulsa, Tulsa County, State of Oklahoma**

**Ms. Back and Mr. Van De Wiele re-entered the meeting at 1:28 P.M.**

**22134—Andres Meza**

**Action Requested:**

Special Exception to permit used car sales in the CS District (Section 15.020);  
Variance to allow outdoor storage and display of merchandise within 300 feet of an abutting R District (Section 15.040). **LOCATION:** 2203 North Lewis Avenue East  
**(CD 3)**

**Presentation:**

**Andres Meza**, 7330 East 24<sup>th</sup> Street, Tulsa, OK; stated that Karen Meza will interpret for him.

**Karen Meza**, 7330 East 24<sup>th</sup> Street, Tulsa, OK; stated the subject property will be for selling used cars. They have erected a fence all around the subject property to screen the lot from the neighbors.

Mr. Van De Wiele asked Ms. Meza how many cars they anticipated having on the lot at any one given time. Ms. Meza stated there would be a minimum of ten cars with a maximum of 20 cars.

Mr. Van De Wiele asked Ms. Miller if 10 to 20 cars would fit on the lot based on the diagram provided by the applicant. Ms. Miller stated that the diagram on page 4.10 in the agenda packet shows no dimensions so she is not sure.

Mr. Van De Wiele stated there has been an issue of having too many cars on too small of a lot. So the parking spaces need to meet the dimensions and size of parking stalls

as described in the Zoning Code. If the lot will not handle 20 cars based on those standards then the Board would not be inclined to approve the request for 20 cars. Also all parking and driving surfaces would need to be asphalt or paving.

Ms. Miller stated the Permit Office does not look to see the applicant meets the parking standards so it is a policy that this Board has established.

Mr. Van De Wiele asked staff and the applicant if they had heard any issues from any of the neighbors. Staff and the applicant both stated that they had not heard from any of the neighbors.

Mr. White asked Mr. Meza what would be stored outside. Ms. Meza stated there would only be cars stored outside.

Mr. Van De Wiele asked Ms. Meza if all the cars are going to be operable and ready to drive off the lot. Ms. Meza answered affirmatively.

Mr. Flanagan asked Ms. Meza how many employees there would be on the site. Ms. Meza stated there would be two or three. Mr. Flanagan stated that according to the diagram provided there are 24 parking spaces and with three employees where will be the customers park. Ms. Meza stated they plan on reserving four or five spaces for customers because they do not expect a lot of customers.

Ms. Back asked Mr. Meza if anyone had told him the rear fence needed to be a solid screening fence. Ms. Meza stated that no one has mentioned that to them. Ms. Back informed the applicant that the rear fence needs to be a solid screening fence and at least six feet in height because of the abutting residential district. Ms. Back stated the applicant could purchase chain link fence slats that can be slid into the fencing. Ms. Meza stated that the rear fence is a wooden fence with the side fencing being chain link.

Ms. Moyer stated that if the Board were to approve the application with the condition that it complies with Section 55.090-D parking ratios, the Permit Office would consider that before the permit is issued.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **FLANAGAN**, the Board voted 5-0-0 (Back, Bond, Flanagan, Van De Wiele, White “aye”; no “nays”; no “abstentions”; none absent) to **APPROVE** the request for a Special Exception to permit used car sales in the CS District (Section 15.020); Variance to allow outdoor storage and display of merchandise within 300 feet of an abutting R District (Section 15.040). The approval is subject to no more than 20



operable vehicles for sale on the subject lot. The lot must comply with all other zoning requirements including screening and parking/driving surfaces. The parking is to meet the code requirements per Section 55.090-D. The Board determines that the following facts, favorable to the property owner, have been established:

- a. That the physical surroundings, shape, or topographical conditions of the subject property would result in unnecessary hardships or practical difficulties for the property owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;
- b. That literal enforcement of the subject zoning code provision is not necessary to achieve the provision's intended purpose;
- c. That the conditions leading to the need of the requested variance are unique to the subject property and not applicable, generally, to other property within the same zoning classification;
- d. That the alleged practical difficulty or unnecessary hardship was not created or self-imposed by the current property owner;
- e. That the variance to be granted is the minimum variance that will afford relief;
- f. That the variance to be granted will not alter the essential character of the neighborhood in which the subject property is located, nor substantially or permanently impair use or development of adjacent property; and
- g. That the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of this zoning code or the comprehensive plan. Finding that the Special Exception will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; for the following property:

**LTS 148 & 149 LESS W5 THEREOF BLK 13, TULSA HGTS, City of Tulsa, Tulsa County, State of Oklahoma**

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**NEW APPLICATIONS**

**22141—Matthew Wilson**

**Action Requested:**

Variance to allow a projecting sign to exceed the maximum allowable height to permit a sign 52.8 feet above grade with a 41 feet setback from the center line of South Cheyenne Avenue (Section 60.080-D). **LOCATION:** 211 West 3<sup>rd</sup> Street South (**CD 4**)

**Presentation:**

**Matt Wilson**, 3201 Manor Way, Dallas, TX; stated the sign is for the Hampton Inn and Suites that is currently under construction at the corner of 3<sup>rd</sup> and Cheyenne. The proposed location of the sign is the southeast corner mounted on the direct corner to provide visibility to the 3<sup>rd</sup> Street and Cheyenne Street motorists and pedestrians. The

sign will have a 4'-6" projection with an overall height of 32'-8". The sign size was designed at the appropriate scale in relationship to the building. The design specs are geared to fit in with the spirit of the downtown setting. There will be a red LED border around the perimeter of the sign to simulate neon with 5" deep channel letters mounted to the aluminum back ground to provide dimension and fit into the old look of downtown projecting blade signs.

Mr. Van De Wiele asked if there was any issue with the wall sign today. Ms. Moye stated the Board is only considering the blade sign today. Mr. Van De Wiele asked if there is a license with the sign being over the City right-of-way sidewalk. Ms. Moye stated that she is not aware of any issues.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **BACK**, the Board voted 5-0-0 (Back, Bond, Flanagan, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Variance to allow a projecting sign to exceed the maximum allowable height to permit a sign 52.8 feet above grade with a 41 feet setback from the center line of South Cheyenne Avenue (Section 60.080-D), subject to conceptual plans 5.10, 5.12 and 5.14. The Board determines that the following facts, favorable to the property owner, have been established:

- a. That the physical surroundings, shape, or topographical conditions of the subject property would result in unnecessary hardships or practical difficulties for the property owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;
- b. That literal enforcement of the subject zoning code provision is not necessary to achieve the provision's intended purpose;
- c. That the conditions leading to the need of the requested variance are unique to the subject property and not applicable, generally, to other property within the same zoning classification;
- d. That the alleged practical difficulty or unnecessary hardship was not created or self-imposed by the current property owner;
- e. That the variance to be granted is the minimum variance that will afford relief;
- f. That the variance to be granted will not alter the essential character of the neighborhood in which the subject property is located, nor substantially or permanently impair use or development of adjacent property; and
- g. That the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of this zoning code or the comprehensive plan; for the following property:

**LT 4 & E10 VAC ALLEY ADJ ON W BLK 102, TULSA-ORIGINAL TOWN, City of Tulsa, Tulsa County, State of Oklahoma**

**22142—Brandon and Amanda Cooper**

**Action Requested:**

Appeal of a Decision by the Tulsa Preservation Commission to deny a historic permit application – HP-16-056. **LOCATION:** 1824 East 16<sup>th</sup> Place South (**CD 4**)

**Presentation:**

**Mike Daniel**, 2130 East 47<sup>th</sup> Street, Tulsa, OK; stated he is appearing on behalf of the Coopers. The question today is whether the Tulsa Preservation Commission properly applied the Tulsa Zoning Code and in addition whether they properly applied their own regulations. The Coopers love the midtown area, bought a house and started making improvements. Their intent was to provide a safe and secure environment for themselves and their son. They were aware that they lived in a historical area but they did not fully understand what that meant. They had previously replaced windows without any issues and there had been windows replaced on the house without any issues. The Coopers were not aware that they needed to apply for a historical permit or any permit to install the eight windows that are at issue today. On August 15<sup>th</sup>, the day the Coopers had lined up for the window installation, the installer was approached by a woman in the neighborhood who turned out to be Commissioner McKee of the Tulsa Historical Preservation Commission. After a couple of confrontations Commissioner McKee called the efforts to a stop claiming she would have a cease and desist order issued claiming she is good friends with the Mayor and would return. Commissioner McKee informed everyone that if any of the old windows were removed or replaced the Coopers would be forced to reinstall them again. The Coopers and the window installers made the decision to stop. Staff from the Tulsa Preservation Commission visited the site later the same day and Dr. Porter who was very polite and professional provided information to the Coopers for them to file an application. To be able to make the next hearing date the Coopers had less than 24 hours to file the application. At the hearing before the Commission the request was denied. One of the Commissioners brought up the issue of visibility of certain windows. Mr. Daniel believes the Commissioner interpreted the standard incorrectly because they wanted to know the visibility was from a public right-of-way and the rule of standard is the adjoining street. It was also noted that some of the windows were covered by vegetation. One of the Commissioners noted that they did not see sufficient deterioration in the windows to justify replacement. Mr. Daniel stated that he believes there have been a lot of materials provided by both sides and the power point presentation was the primary focus at the hearing on August 23<sup>rd</sup> but the presentation did not include all the pictures regarding the windows conditions but more pictures were included in the staff report. The power point presentation did not cover all the windows; it covers five of the eight windows in question. Commissioner McKee also spoke in the hearing about what she had heard from the window installer and about the homeowner's response to being notified of the need for a permit. Mr. Daniel believes there are three reasons the

decision should be reversed in whole. The first is that four windows are not visible from the adjoining street; two of the windows are on the rear of the house and impossible to be seen from the adjoining street.

Mr. Van De Wiele asked Mr. Daniel which windows he was referring to according to his diagram presented in the agenda packet. Mr. Daniel stated that windows #1 and #2 are in the very front of the house. Windows #3 and #4 are on the west side of the house. Windows #6 and #7 are on the east side of the house which is covered by vegetation. Window #8 is on the rear of the house facing the rear fence. There are pictures taken by the Preservation Commission staff, which they utilized at the hearing, showing the windows cannot be seen.

Mr. Van De Wiele asked Mr. Daniel if the two windows he is discussing the visibility of are actually windows #5 and #8. Mr. Daniel answered affirmatively.

Mr. Daniel stated that the Code clearly provides, in Section 70.070-B3, that portions of a building, structures or sites not visible from adjoining streets are exempt from the permit process. The Code also provides, in Subsection 6 of 70.070-B6, that general landscape maintenance and planting of new organic materials is another exemption from the process. Mr. Daniel stated that during the hearing there was a statement made that even though the windows are covered by vegetation but to make the assumption that the vegetation can be removed, or ordered to be removed by the Commission is improper. Mr. Daniel does not think that the Commission can do so. Mr. Daniel stated that the Code also provides in Section 70.070-F the standards and review criteria. It provides that the Commission must use the adopted design guidelines to evaluate the proposed work and must to the greatest extent possible strike to affect a fair balance between the purposes and intent of the regulations and desires and needs of the property owner. Based on a reading of the minutes it is clear that there was never any effort given to fully appreciate or take into consideration the desires and needs of the Coopers. Part of that desire and need is the condition of the window itself. Mr. Daniel thinks as it applies specifically to, as stated in the minutes, whether the windows were deteriorated. The regulation states that if the replacement of deteriorated windows is necessary a person can utilize aluminum windows. The Commission does not have the sole say in whether or not the windows are deteriorated. The guidelines provided in the Code is striking a fair balance between the desires and the needs of the property owner and doing that to the fullest extent possible. The installation or replacement of windows in the Coopers house does not necessarily destroy the house but actually enhances it. The windows do not take away from the existing look of the house. Some of the windows were intended to match the existing 14 windows that have been previously replaced. The replacement windows are not out character with the setting and the surroundings of the Coopers house. Mr. Daniel stated that over half of the windows in the houses on the subject street have either been replaced with either aluminum or vinyl or they are a mixture of replacements and original windows or they are covered by storm windows which are non-painted clear aluminum windows. Those are a prohibited use of materials under the historic preservation program. The subject windows are not going to change the significant characteristics of the Coopers house. The two windows

facing the street will have the same muntin pattern as the original windows. The Coopers ordered and purchased the subject windows before they were aware of the limitations, so even on their own they made an intentional decision to keep the muntin pattern on the two main windows that are most visible from the street. Mr. Daniel stated that another consideration for the review process would be is to what extent the work proposed is consistent with the purposes and intent of the historic preservation districts which is outlined in Section 20.020-A of the Code. Without a doubt conservation and preservation and protection of historic resources are important. The Code outlines additional items that are taken into consideration along with preservation such as promoting the economic and general welfare of the public, safe guarding the cultural social heritage of the city, preserve and enhance the environmental quality and economic value of the districts, strengthening the economic base by promotion of conservation and reuse, historic resources and promote the development of the community. Mr. Daniels believes the purposes and intent of the historic districts is outlined in the Code which is historical preservation is wanted but want to do so in a fair and just manner. People want to protect what Tulsa already has; protect the sense of community and protect the sense the cultural and social heritage of the City. Mr. Daniel would submit that the Coopers moving into midtown Tulsa and sending their children to the Tulsa public schools is exactly the type of community the City of Tulsa is looking for. If such rigid regulations and requirements are imposed on home owners it will make it almost impossible to obtain economic replacement windows. There are only a small group of people that can afford to purchase new wood windows or repair the existing windows. Mr. Daniel stated he believes there was a clear conflict of interest of the Commission by the actions of Commissioner McKee. Supporting materials have been provided on conversation with the window installer and the Coopers are here to speak to what happened on the day in question. Even putting aside what Commissioner McKee may have or have not said, she lives right down the street within 300 feet of the Coopers house, visited the property twice, and the Coopers stopped the window installation based on what was said to the window installer by Commissioner McKee clearly establishes a conflict of interest. Mr. Daniel stated that Commissioner McKee should not have participated in the hearing on August 23<sup>rd</sup>. She should not have even spoke at the hearing on August 23<sup>rd</sup>. She never declared her conflict of interest to anyone. He believes that alone justifies the reversal of the decision. The Coopers are also concerned that they can never get a fair hearing in front of the Commission now based on Commissioner McKee's actions. Mr. Daniel would respectfully request that the denial of their appeal be reversed.

Mr. Van De Wiele had page 6.14 displayed on the overhead projector and asked Mr. Daniel if the Coopers went to the Commission with three requests. Mr. Daniel answered affirmatively. Mr. Van De Wiele asked if one was to replace double hung windows with matching muntins, and he asked Mr. Daniel for his understanding of the Commissions disapproval or rejection of the request. Mr. Daniel stated that based on the minutes the only viable basis for rejection is that the Commission did not see sufficient deterioration of the windows to justify replacement. Mr. Van De Wiele asked Mr. Daniel if the Commission gave a determination of sufficient deterioration to justify replacement. Mr. Daniel stated that he was not present at the meeting. Mr. Van De

Wiele asked Mr. Daniel if the second request was for simple one over one single hung aluminum windows. Mr. Daniel answered affirmatively. Mr. Van De Wiele asked Mr. Daniel what the basis was for rejection of those windows. Mr. Daniel that the only thing he can ascertain is that the Commission did not see sufficient deterioration. Mr. Van De Wiele asked Mr. Daniel if he could determine if the replacement windows would have passed muster if there had been a determination of sufficient deterioration. Mr. Daniel stated that he would need to defer to the Coopers. Mr. Van De Wiele asked Mr. Daniel if the door and the sidelight request were continued. Mr. Daniel answered affirmatively. Mr. Van De Wiele asked Mr. Daniel if he had received a final decision on that request. Mr. Daniel stated that they have not. Mr. Daniel stated the request was placed on a docket before the Commission because he personally wrote to Dr. Porter and requested a continuance in accordance with the Code until there was resolution with respect to the replacement windows. Mr. Van De Wiele asked Mr. Daniel if the appeal before the Board today did not include the door and sidelights. Mr. Daniel answered affirmatively and stated that it is still pending before the Preservation Commission.

**Brandon Cooper**, 1824 East 16<sup>th</sup> Place, Tulsa, OK; stated that he was present at the meeting on August 23<sup>rd</sup>. Mr. Cooper stated that during the meeting the best explanation he received for not replacing the windows is that there was not sufficient proof that the damage was bad enough to replace the windows, which the Commission went strictly from pictures. Some of the pictures were taken eight to ten feet away and a few of the pictures were provided by his wife showing deterioration the inside of the existing windows.

Mr. Van De Wiele asked Mr. Cooper if the pictures that were provided the Board for today's hearing were provided to the Preservation Commission for their meeting. Mr. Cooper stated that some of the pictures were used. Mr. Cooper stated there were pictures sent in and a lot of the pictures were not used in the power point presentation at the meeting.

Mr. Van De Wiele asked Mr. Cooper if he got a sense that once the windows reached whatever level of deterioration was sufficient to justify replacement, if the proposed windows would be acceptable. Mr. Cooper stated that it never got that far.

Mr. Bond asked Mr. Cooper if there a person could tell a difference between the old windows and new windows if they were standing on 16<sup>th</sup> Street looking at the house. Mr. Cooper stated that they could not. Mr. Bond asked Mr. Cooper if the neighbor's house to his west had storm windows on their house. Mr. Cooper answered affirmatively and stated the house on the east side has aluminum windows all around the entire house.

Mr. Van De Wiele asked Mr. Cooper if he knew whether those windows had or had not been approved. Mr. Cooper stated the windows were installed without approval.

Mr. Bond asked Mr. Cooper to explain the pictures of the hardwood floors. Mr. Cooper stated the hardwood floors had been refinished two years ago and since that time the

front window has leaked water into the kitchen area and the floors must be refinished because the wood is buckling due to the water damage. The buckling floor would be under window #1 on the window diagram.

**Amanda Cooper**, 1824 East 16<sup>th</sup> Place, Tulsa, OK; stated there is significant wood rot on the windows due to the moisture.

Mr. Bond asked how thick the original windows are in comparison to the modern window. Mr. Cooper stated that they are not very thick and most of the windows are screwed or painted shut so they cannot be opened. Mr. Bond asked Mr. Cooper if he thought the window could withstand his child hitting it. Mr. Cooper stated that it would not.

Mr. Bond asked Mr. Cooper if he was asked these questions or any type of questions like it at the Historic Preservation Commission meeting. Mr. Cooper shook his head no.

Mrs. Cooper stated that they have replaced the rear bedroom windows in June and liked it so much they decided to have the rest of the house done.

Mr. White asked the Coopers about the staff comments stating the realtor had informed them that the house was in a historic area. Mr. Cooper answered affirmatively and stated the realtor stated a historic area which he thought was kind of neat but did not know they had any type of guidelines or rules to follow. He was never told he to ask permission to do something to the house. Mrs. Cooper stated that Thermal Windows pointed out that the house was in a historic district and asked her to initial which area the house was so initialed by Gillette on the paperwork because she did not even know which historical district the house was in.

Mr. Bond asked Mr. Cooper what Commissioner McKee relayed to the window installer the day she came to the house to stop the window installation. Mr. Cooper stated the window installer called him to say that a neighbor had told him he needed to stop the installation of the windows until a permit was issued. At that point he told the installer to continue because he thought the permit was to come from the City and he had read that he did not need a permit to change an existing structure.

Mr. Van De Wiele asked Mr. Cooper if he needed a building permit from the City. Mr. Cooper stated that he did not. Mr. Van De Wiele asked Mr. Cooper what permit he was talking about. Mr. Cooper stated that he thought the neighbor was talking about a permit from the City and knew a City permit was not necessary for what was being done.

Mr. Cooper stated the window installer called him again about 15 minutes later stating that the same woman had returned and threatened with a cease and desist order and the Mayor if the work did stop. The woman stated she would be return within ten minutes with a cease and desist order from the Mayor if the work did not stop. Mr.

Cooper stated the window installation foreman and he agreed to stop work because it would be in everyone's best interest and go through whatever process was necessary.

Ms. Back asked Mr. Cooper if the muntins were exterior mounted. Mr. Cooper nodded yes. Ms. Back asked if the selected window was set as the old windows had been set or if they were set flush. Ms. Cooper stated the windows are set back in. Ms. Cooper stated that in the rear of the house some of the trim work was also rotten and they had the new trim work mimic the old so it looks exactly like it did. Ms. Back asked if the new alumni window was white. Ms. Cooper stated they are actually cream or an off white color because it looked better with the trim.

**Interested Parties:**

**Dr. Roy Malcolm Porter**, 175 East 2<sup>nd</sup> Street, Suite 560, Tulsa, OK; stated he serves as the Historic Preservation Officer for the City of Tulsa and as a member of the staff of the Tulsa Preservation Commission. As the request for appeal is reviewed he would like the Board to remember the Yorktown historic district was created as a historic preservation overlay district at the request of the neighbors. It is residents who sought to protect the character of their neighborhood. The unified design guidelines were developed to assist with the preservation. There is abundant documentation that has been introduced by the appellants and particularly the documentation submitted on October 6<sup>th</sup>. Several pages in that documentation have been cited as justification for their request for reversal of the decision by the Tulsa Preservation Commission. Dr. Porter stated there are a number of photographs of residences on 16<sup>th</sup> Place and records reveal that only two of the owners actually received permits for the replacement windows. Other examples show windows that were installed prior to the designation of Yorktown as the historic preservation overlay district or windows whose own installation is in violation of the Zoning Code. The Coopers have cited the installation of windows on their residence seeking to match windows previously installed which were likewise installed without a historic preservation permit so they sought to match the windows and failed to seek an application for installation of those windows as well. Dr. Porter stated there have been a number of comments about the conduct of the Commission, particularly about Commissioner McKee. There is no personal benefit derived by Commissioner McKee from participation in this review. She is a volunteer just like the members of the Board of Adjustment. She is a resident of Yorktown so she is entitled.

Mr. Van De Wiele stopped Dr. Porter and stated that whether or not this should have been a recusal situation or not, when a person sits on these types of Boards there are times a person needs or should recuse. All Board members sign an ethics agreement stating that line will not be crossed. Dr. Porter stated he only offered that comment to indicate there is no undue influence being exerted by Commissioner McKee with commentary. The task of the Tulsa Preservation Commission is not an easy one because the guidelines direct the Commissioners toward the preservation of the character of the residences in neighborhoods and yet the Commissioners have strived to accommodate owners as indicated by the approval of over 90% of the applications presented for review. During the course of the review there is a power point presentation presented which elaborated on the application itself. The power point



presentation presented a selection of items. The staff report that Dr. Porter referred to during the presentation contains the more complete documentation which accompanied the application. The question which most directly occupies everyone is whether the Tulsa Preservation Commission relying on its expertise and applying the unified design guidelines appropriately reviewed the application for the window replacement at the subject residence. As the applicant's noted, only window #8 which faces the rear yard would be exempt from the review because the other windows are visible enough from the street as indicated on slide #15 of the power point presentation, and as viewed by the historic preservation officer and his colleague. There is no order to remove vegetation. There is no need to issue an order because in fact the windows are visible enough.

Mr. Van De Wiele asked Dr. Porter what he meant by the term "visible enough". Dr. Porter stated that the interpretation is that if any part of the window can be seen from the street it is visible enough. Even if the window is partly visible it is subject to review. That has typically been the procedure, if there are any elevations visible from an adjacent street or public right-of-way or sidewalk, any alterations of those facades are subject to review.

Dr. Porter stated the focus on the windows is appropriate because windows are the most visible feature which defines the character of a residence. The Tulsa Preservation Commission very carefully views applications which propose replacement of windows. There are several classes of repair of which have been identified. All of the repairs in these classes address the conservation of the historic material.

Mr. Van De Wiele asked Dr. Porter where he was pulling the classes from. Dr. Porter stated the repair classes are based on standards developed by the National Park Service, but they are available in the window repair and replacement guide. Mr. Van De Wiele asked Dr. Porter if they were baked into the guidelines or the commission's rules and regulations. Dr. Porter stated they inform applicants as they prepare their window survey form and they inform Commissioners as they view applications and evaluate the conditions. The Tulsa Preservation Commission refers the applicant to the window survey form and to the window replacement guide.

Mr. Van De Wiele asked Dr. Porter if part of the review at the Tulsa Preservation Commission does someone go out to the site or look at pictures. Mr. Van De Wiele stated that as he reviewed the minutes the basis for the rejection was basically the state of the windows. Dr. Porter stated that was correct. Dr. Porter stated that in the opinion of the Commissioners there is no condition so severe that repair or replacement in kind, i.e., repair with an epoxy and a splice, that repair would have been the appropriate direction and would have complied with practices. Dr. Porter stated there was no condition so severe that outright and wholesale replacement was justified.

Mr. Van De Wiele asked Dr. Porter if the Commission ever approved aluminum or vinyl windows. Dr. Porter answered affirmatively.

Mr. Van De Wiele asked Dr. Porter that if he felt the existing windows had deteriorated enough are the windows the Coopers chose the correct type? Dr. Porter stated that question should be directed toward the Commissioners, because his role as historic preservation officer is very carefully defined by the Zoning Code so he never recommends an approval or disapproval of any application or recommends any particular window. Dr. Porter deferred to Commissioner Shears.

Ms. Back asked Dr. Porter if the windows chosen meet the guidelines. Dr. Porter stated the windows for replacement have to match the existing windows and it is not just the dimensions only but in terms of profile, pattern of muntins and size of pane. There is no regulation of color. Ms. Back asked Dr. Porter if the windows the Coopers purchased meet those guidelines. Dr. Porter stated the windows selected for the north façade match the windows currently installed, the other windows do not. It is unfortunate that the Coopers not only replaced windows previously without a permit but they used windows that were previously inappropriately installed as justification to install those windows.

Ms. Back asked Dr. Porter what the cost difference is between the types of required repair to the cost of purchasing a new window. Dr. Porter stated there are some repairs that can be attempted by owners and successfully completed. Ms. Back asked Dr. Porter to assume the Coopers are not going to attempt such a repair themselves. Dr. Porter stated in that case it is probably a comparable expense or approximately the same. For the process to be fully developed a contractor would need to be selected with the appropriate experience, solicit bids and engage in negotiations. These interventions have successfully completed by owners in other districts.

Mr. Bond asked Dr. Porter if the windows in the Coopers house were more historically accurate compared to the windows in the neighbors house to the west. Dr. Porter stated they are probably more historically accurate. Dr. Porter stated the Commission was informed that they were the windows present when the Coopers purchased the house and the Commission assumes they are the windows that are original.

Mr. Van De Wiele asked Dr. Porter if the windows on the houses on either side weighed into the Commission's decision at all. Dr. Porter answered no, because the critical factor is the condition of the windows on the subject residence. Mr. Van De Wiele asked if that was regardless of what is on the residences on either side of the subject residence. Dr. Porter stated that only if those installations were appropriate but as the Commission's own records reveal there are numerous treatments of the windows in the 1800 block of 16<sup>th</sup> Place which were either completed before the designation of the district so they would be exempt or the treatments have occurred since the designation without a permit violating the Zoning Code.

Mr. Bond asked Dr. Porter if a house has inappropriate windows what is the incentive for the homeowner to replace windows. Mr. Bond asked Dr. Porter if the way in which the Commission enforcing the regulations imposes such an economic burden on homeowners that they do not even replace their windows with windows that historically

accurate. Dr. Porter stated that he contends the Commissioners strive to strike a balance in applications. They are certainly mindful of the expense. The Commissioners do not casually enforce guidelines but do so carefully and conscientiously. Mindful of the challenge of preservation of historic material is no easy task and that there is an expense involved. Dr. Porter contends that anyone who chooses to reside in a historic district needs to inform himself fully about the challenges and the responsibilities of ownership because it is a different environment.

Mr. Bond asked Dr. Porter how often the Preservation Commission held window repair workshops. Dr. Porter stated they are held once a year. Mr. Bond asked Dr. Porter how the community is alerted about the workshops. Dr. Porter stated they are posted on the Preservation Commission's website and their Facebook page. Mr. Bond asked Dr. Porter if neighborhoods are ever informed about the workshops. Dr. Porter stated there are Commissioners who are active in their neighborhood association so he supposes they do so. Dr. Porter stated that the Facebook page and the website are regularly viewed by the districts so they are aware.

Dr. Porter stated the Tulsa Preservation Commission strives to inform owners in the districts. They receive a notification at least once annually, either a postcard or a flyer, about the requirements of permits and the activities governed by the unified design guidelines. There is no shortage of effort to inform the owners about the responsibilities. This situation is not a hardship that the Tulsa Preservation Commission created for the Coopers and this situation is unfortunate for the Coopers. The Commission is resolved to uphold both the spirit and the intentions of the guideline and protect the character of the Yorktown historic district as it is charged to do by the Zoning Code.

**Mr. Flanagan recused at 2:40 P.M. and left the room.**

**Robert Shears**, 1211 East 18<sup>th</sup> Street, Tulsa, OK; came forward at the request of Mr. Van De Wiele.

Mr. Van De Wiele asked Mr. Shears if the Board is correct if this is basically a condition of deterioration or non-deterioration at the hearing that determined this year or nay. Mr. Shears answered affirmatively.

Mr. Shears stated that in the evidence in front of the Commission the windows appeared to be repairable.

Mr. Van De Wiele asked Mr. Shears to explain what a window that has deteriorated enough look like. Mr. Shears stated that he would have to go back to Dr. Porter's statement about the classes. The Coopers had the information and the survey but it did seem to be incomplete. Mr. Shears stated that in the photos the Commission saw there did not seem to be any evidence that the windows needed to be replaced. The

guideline states to keep original windows if possible and that is what the Commission based their decision on.

Mr. Van De Wiele stated that he can see gaps between the stops in the window and rotted wood. Mr. Van De Wiele stated that he understands a person could dig out the rotten wood and fill it in with an epoxy and he asked Mr. Shears if that is typically where the Commission likes for people to start. Mr. Shears stated that if the windows were removed and repaired there might not be a gap as shown in the picture. Mr. Shears stated that from the picture presented on the overhead screen he cannot tell if there is rot.

Mr. Van De Wiele asked Mr. Shears if this is something that is customarily seen on an application. Mr. Shears stated that it is very similar. Mr. Van De Wiele asked Mr. Shears if the window is rejected then the home owner is expected to go to a wood window restoration company and is that the typical guidance the Preservation Commission gives. Mr. Shears stated the Coopers situation is typical of what the Commission sees. Mr. Shears stated that he felt the Commission did not have enough evidence.

Mr. Van De Wiele asked Mr. Shears that if there had been enough evidence and deteriorated enough are the windows seen on the front of the Coopers house sufficient and if they meet with Mr. Shears' personal approval. Mr. Shears stated that in his opinion he thinks they are appropriate. Mr. Van De Wiele asked Mr. Shears if the windows on the driveway side of the house were appropriate. Mr. Shears stated that he does not remember what those windows look like. Mr. Van De Wiele had a post window replacement picture placed on the overhead projector and asked Mr. Shears if the window was an appropriate window. Mr. Shears stated that he does not know what the original window looked like and he could not say, but the window does not have muntins so he would say it is not appropriate. Mr. Van De Wiele asked Mr. Shears if muntins could be added after the fact. Mr. Shears stated that it probably depends on the window manufacturer.

**Rebuttal:**

**Mr. Mike Daniel** came forward and stated the pictures of the neighborhood surrounding the Coopers residence and the Coopers house goes back to the purpose and intent of the Zoning Code when establishing historic districts. The Coopers house is a historic resource and the definition of a historic resource. The historic resource is to be consistent with the surroundings and settings. The focus of the Coopers application in this appeal is based on the application they filed. In regards to the window survey the Coopers previously filled out is incomplete and is wrong. The Coopers stated there were no existing sashes but that is not true because a sash is a window part. The Coopers filled out the survey as quickly as possible so they could get it on file the next day for the application purposes. The crux of it is the Commission still has to consider and balance to the greatest extent possible the desires and needs of the home owner which are the people seeking the application. Dr. Porter stated the windows lacked sufficient deterioration. It is not the opinion of the Commission but it is the opinion of the

Commission after fully considering and balancing to the fullest and greatest extent possible the desires and needs of the home owner as well. Mr. Daniel stated the windows that Dr. Porter stated were visible from the street are the previously replaced windows and are not part of the application before the Commission.

Mr. Van De Wiele asked Mr. Daniel if windows #6 and #7 are outside the fence line but are hidden by the vegetation. Mr. Daniel answered affirmatively.

**Comments and Questions:**

Mr. Van De Wiele stated that he would be favor of granting the appeal in regards to window #8, window #5, and he thinks window #1 and window #2 are clearly visible while window #3 and window #4 are not very visible, and window #6 and window #7 are visible especially when the leaves are not on the vegetation. So it is a question as to those six windows. Mr. Van De Wiele stated that he wishes the Preservation Commission had taken the further step to tell the Board, even if the windows are deteriorated, these windows either would or would not have been appropriate. He believes the Board has heard that at least from a style and pattern that window #1 and window #2 would have been appropriate in their character. Mr. Van De Wiele stated that from he has seen and heard there are wood floors being damaged from rain, there are gaps in between the sash and the window stops, there is wood rot that looks like you could poke a finger through, and the fact that the Coopers would need to rebuild or epoxy the existing windows that sounds like deterioration. Mr. Van De Wiele believes that the conclusion that the windows were not deteriorated is incorrect. Mr. Van De Wiele stated that he does not think that windows #3, #4, #6 and #7 are historically appropriate. Mr. Van De Wiele stated that he would grant the appeal in regards to windows #8 and #5 because they are not visible from the street, windows #1 and #2 because they were deteriorated and replaced with character appropriate windows, and grant the appeal to windows #3, #4, #6 and #7 because there is sufficient deterioration but he does not think they are the appropriate window from a character standpoint because of the muntin pattern.

Mr. Bond stated the Board believes the Board is enforcing to the letter based on deterioration or not the historic standards. He thinks at some point the Board gets into a situation by placing so much regulation on the home owner and there is a question as to whether the regulation was appropriate or not. Does the Board then become a burden to people who are attempting to revitalize historic houses, and what is the incentive for the neighbors who have the storm windows, which have no historic value at all, to work with the Preservation Commission to replace those windows to bring them into conformity. Mr. Bond stated that he would like to remand the decision to the Preservation Commission on windows #3, #4, #6 and #7 to see if they can make some type of decision or work with the applicant.

Ms. Back stated that she is in agreement with windows #5, #8, #1 and #2. She believes that windows #1 and #2 are historically appropriate. In regards to windows #3, #4, #6 and #7 Ms. Back thinks the Board is being asked to either approve or modify the appeal requesting the muntins be placed on those windows.

**Board Action:**

On **MOTION** of **BACK**, the Board voted 4-0-1 (Back, Bond, Van De Wiele, White “aye”; no “nays”; Flanagan “abstaining”; none absent) to **GRANT** the Appeal of a Decision by the Tulsa Preservation Commission to deny a historic permit application – HP-16-056 per Exhibit 6.26. Windows #5 and #8 are exempt because they are not visible from the street. Windows #1 and #2 as presented with the muntins are acceptable due to significant deterioration and they are acceptable to historic preservation standards. Windows #3, #4, #6 and #7 show significant deterioration and are viewable from the street; the required muntins be added to the windows to preserve the historical design of the house; for the following property:

**LT 28 BLK 1, WEAVER ADDN, BUNGALOW COURT, City of Tulsa, Tulsa County, State of Oklahoma**

**Mr. Flanagan re-entered the meeting at 3:08 P.M.**

**22143—Zach and Melissa French**

**Action Requested:**

Special Exception to permit low-impact manufacturing and industry in the CH District to permit a microbrewery (Section 15.020). **LOCATION:** 2113 East Admiral Boulevard North **(CD 3)**

**Presentation:**

**Melissa French**, 4918 South Columbia Place, Tulsa, OK; stated the subject property is currently zoned high intensity commercial and they would like to have a small craft brewery on the property.

Mr. Van De Wiele asked Ms. French if everything would be done indoors. Ms. French answered affirmatively.

Mr. Van De Wiele asked Ms. French what type of smells would be smelled outside the brewery. Ms. French the public will smell fermentable beverages but the smells should not be noticed outside.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Back, Bond, Flanagan, Van De Wiele, White “aye”; no “nays”; no “abstentions”; none absent) to **APPROVE** the request for a **Special Exception** to permit low-impact manufacturing and industry in the CH District to permit a microbrewery (Section 15.020). Finding that the Special Exception will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; for the following property:

**LT 6-7 BLK 3, GILLETTE-HALL ADDN, City of Tulsa, Tulsa County, State of Oklahoma**

**22144—Cody Jacobs**

**Action Requested:**

**Special Exception** to permit an addition to a non-conforming dwelling with the side setback being less than 5 feet from the property line (Section 80.030-D).

**LOCATION: 1523 South Gary Avenue East (CD 4)**

**Presentation:**

**Cody Jacobs**, 303 North Santa Fe Avenue, Tulsa, OK; stated he is adding a master suite to the house on the subject property. The house was built in 1930 and it is too close to the setback line. The addition will be approximately 700 square feet.

Mr. White asked Mr. Jacobs if he had received any comments from the neighbor on that side of the house. Mr. Jacobs stated that the house on that side of the subject property is a rental and he has not heard anything from them.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Back, Bond, Flanagan, Van De Wiele, White “aye”; no “nays”; no “abstentions”; none absent) to **APPROVE** the request for a **Special Exception** to permit an addition to a non-conforming dwelling with the side setback being less than 5 feet from the property line (Section 80.030-D), subject to conceptual plan 8.7. Finding that the Special Exception will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; for the following property:

**LT 19 BLK 2, EXPOSITION HGTS ADDN, City of Tulsa, Tulsa County, State of Oklahoma**

**22145—Charles D. Cahill, PLS 1470**

**Action Requested:**

Variance of the minimum street frontage from 50 feet to 32.65 feet to permit a lot-split (Section 15.030-A). **LOCATION:** 2931 East Apache Street North **(CD 1)**

**Presentation:**

**Charles Cahill**, 7060 South Yale, Suite 603, Tulsa, OK; stated he represents Apache Properties. The property is one large piece of property with buildings on the south side and the north side. His client is proposing to split the property between the two buildings. His client currently leases the building on the south side of the property and the building on the north side of the property is vacant. The issue is East 29<sup>th</sup> Street North, which at the north end of the property it dead ends. North of the property there is a 10 foot alleyway and the City of Tulsa owns the south 20 feet of Block 8 of the subdivision making 30 feet. The north 30 feet on Tract A was, at one time, dedicated for a road but it was abandoned by the County and returned to the property owner. The property owner would access the north tract from East 29<sup>th</sup> Street North which is 32.65 feet of the dead end portion thus the request for the Variance.

Mr. Van De Wiele asked Mr. Cahill if it was a 60 foot road that is straddling the property line. Mr. Cahill answered affirmatively.

Mr. Van De Wiele asked Mr. Cahill if historically the two buildings had been operated as separate businesses. Mr. Cahill stated that he does not know.

Mr. White asked Mr. Cahill if he had a hardship. Mr. Cahill stated that the hardship is that the land owner would like create a business in the north building that he is not currently leasing, and the frontage to the property. The only access is from Apache through a parking lot that is being used for the southern leased property. His client would like to access the northern property from the north so they do not need to use the parking lot for access.

Mr. Van De Wiele asked Mr. Cahill if there was an old right-of-way that goes up the east side of the property. Mr. Cahill stated that is actually a long lot in the subdivision next door to the east and it is an abandoned railroad and owned by Santa Fe.

Mr. Van De Wiele asked Mr. Cahill who owned the 10 foot alleyway. Mr. Cahill stated that he assumes it is owned by the City of Tulsa, because the City of Tulsa owns the south 20 feet of Block 8 which is the whole block. At one time it was intended for the road to go all the through and over the railroad to the west but it was never done and the County let it go.

Ms. Miller asked Mr. Cahill if his client had submitted for a lot-split. Mr. Cahill stated that he has not because he wanted to receive the Variance first. Ms. Miller stated before the property goes through the lot-split they are not sure what the requirements would be



asked by City departments. Ms. Miller stated that during the lot-split process the land owner may be asked to dedicate 30 feet of the right-of-way. Mr. Cahill stated there is the potential that the property owner would have to dedicate the right-of-way during the lot-split process but there still not be a public street built in the right-of-way and the 50 foot frontage requirement is actually on a street not just a dedicated right-of-way. Mr. Cahill believes the issue would still be for the Board of Adjustment to grant the property owner a Variance for what is the actual street.

Mr. Van De Wiele asked Ms. Blank if the alleyway shown on exhibit 10.1 is public alleyway. Ms. Blank stated that without seeing the plat itself it would be odd, because if it is a private alley it would be so noted.

Mr. Van De Wiele asked Ms. Blank if access on a public alleyway count as access and serve as a hardship. Ms. Blank did not give an answer.

Mr. Foster stated that what may have occurred with this property is that historically the 10 foot alleyway was dedicated with the plat. Something may have occurred on the northern property where the City then asked for another 20 feet because they wanted to get the right-of-way for 29<sup>th</sup> Street North leaving a 30 foot strip along the entire south edge of Block 8. Then when the client goes through the lot-split process the City may also require the property owner to dedicate 30 feet at the north side so the City will have a full 60 foot right-of-way. The street is what is being questioned in this case because it is not a City maintained street but it is City right-of-way as far as the 30 foot dedication.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Back, Bond, Flanagan, Van De Wiele, White “aye”; no “nays”; no “abstentions”; none absent) to **CONTINUE** the request for a **Variance** of the minimum street frontage from 50 feet to 32.65 feet to permit a lot-split (Section 15.030-A) to the October 25, 2016 Board of Adjustment meeting; for the following property:

**A tract of land being a part of the East Half of the Southwest Quarter of the Southeast Quarter (E/2-SW/4-SE/4) of Section Twenty (20), Township Twenty (20) North, Range Thirteen (13) East of the Indian Meridian, Tulsa County, State of Oklahoma, according to the U.S. Government Survey thereof, being more particularly described as follows: Commencing at the Southeast Corner of the E/2 of the SW/4 of the SE/4 of Section 20; THENCE North 00°05'00” West along the East line of the E/2 of the SW/4 of the SE/4 of Section 20 a distance of 50.00 feet to the “POINT OF BEGINNING”; THENCE North 90°00'00” West along a line that is 50.00 feet measured perpendicularly from the South line of the E/2 of the SW/4 of**

the SE/4 of Section 20 a distance of 208.32 feet; THENCE North 00°00'00" East and perpendicularly to the South line of the E/2 of the SW/4 of the SE/4 of Section 20 a distance of 248.00 feet; THENCE North 90°00'00" West parallel with the South line of the South line of the E/2 of the SW/4 of the SE/4 of Section 20 a distance of 244.08 feet; THENCE North 00°08'08" West parallel with the West line of the E/2 of the SW/4 of the SE/4 of Section 20 a distance of 599.19 feet; THENCE North 89°51'52" East a distance of 72.08 feet; THENCE North 00°08'08" West parallel with the West line of the E/2 of the SW/4 of the SE/4 of Section 20 a distance of 425.00 feet to the North line of the E/2 of the SW/4 of the SE/4 of Section 20; THENCE North 89°57'24" East along the North line of the E/2 of the SW/4 of the SE/4 of Section 20 a distance of 380.89 feet to the Northeast corner of the E/2 of the SW/4 of the SE/4 of Section 20; THENCE South 00°05'00" East along the East line of the E/2 of the SW/4 of the SE/4 of Section 20 a distance of 1272.65 feet to the "POINT OF BEGINNING." (This tract was created by part of the leftover portions of Warranty Deed recorded in Book 6974 at Page 35 after executing Special Warranty Deed recorded in Book 6148 at Page 982 of the Tulsa County Records, but not described by metes-and-bounds to date), City of Tulsa, Tulsa County, State of Oklahoma

#### **21145-B—Don Cooper**

##### **Action Requested:**

Modification to a previously approved Special Exception (BOA-21145-A) to permanently allow car sales on the lot in the CS District. **LOCATION:** 8101 East Skelly Drive South (CD 5)

##### **Presentation:**

**Andrew Shank**, Eller & Detrich, 2727 East 21<sup>st</sup> Street, Suite 200, Tulsa, OK; stated this case is back before the Board for the removal of the temporal restriction on the Special Exception that was granted originally in September 2010 which was conditionally for 13 months. The case was brought back before the Board and at that time the Board granted five years and two months which expires November 2016. Mr. Shank stated that he is not aware of any complaints in that period of time.

Mr. Van De Wiele asked Mr. Shank to confirm that he strictly wants to remove the time limitation. Mr. Shank answered affirmatively. Mr. Shank stated that in the original application the Board placed some robust restrictions on outside storage and other things but there is no request to change any of that.

Ms. Moyer stated that there was a question from a surrounding property owner asking if the underground tanks had been removed. Mr. Shank stated that he did not know if the tanks had been removed.

Mr. White stated that the only thing he can think of is to make sure the parking layout complies with the Code which is what the Board has been doing on car lots. Mr. Shank

stated the he reads the Code there is no requirement for parking design for the wares that are being offered for sale. Mr. Shank stated the requirement is a function of those visiting the property. Mr. Shank stated that the subject business is required to have approximately six parking spaces based on the floor area, and his client is willing to say those parking spaces will be in conformance with Chapter 55.

Mr. Van De Wiele stated that reason that has come up is because the Board has seen multiple used car lots that are crammed and packed with cars. Mr. Shank acknowledged understanding of that statement. The Board is not talking about parking for the customers, but what the Board has been applying the standard to is so the autos cannot be stacked six inches from each other or eight deep.

Ms. Back asked if this was an extra condition that the Board has been adding. Mr. White answered affirmatively. Mr. Van De Wiele stated the Board has been adding the condition for the last year or so because there have been car lots packed border to border which creates other problems and problems for a neighborhood. Mr. Shank stated that he would need to discuss this with his client because he does not have the authority to agree to such a condition today. Mr. Shank stated that his client has a six year track record with the Board but he would talk to his client because the purpose of that chapter in the Zoning Code is to account for customers and employees so he is hesitant to agree with that type of condition but he will take a minute to speak with his client if the Board would allow.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

No Board action required at this time. Mr. Shank will confer with his client.

**22146—Alicia and Joshua Schultz**

**Action Requested:**

Variance of the maximum permitted building coverage area of the rear setback from 300 square feet to 400 square feet, to permit a detached garage (Section 90.090-C.2). **LOCATION:** 1316 East 19th Street South **(CD 4)**

**Presentation:**

**Alicia Schultz**, 1316 East 19<sup>th</sup> Street, Unit B, Tulsa, OK; stated she would like to build a 24 x 24 detached garage on her property. The Variance is to allow the proposed garage to cover 400 square feet of the last 20 feet of the rear setback.

Mr. Van De Wiele asked Ms. Schultz if she wanted to build a 24 x 24 garage. Ms. Schultz answered affirmatively. Mr. Van De Wiele stated a 24 x 24 garage would be over 500 square feet and the request is only advertised for 400 square feet. Ms. Schultz stated that is because the 400 square feet is the only part that is covering the 20 foot rear setback.

Ms. Schultz stated that her hardship is that the property is zoned RS-3 and the subject lot is not a 60 foot lot, but only a 50 foot lot. Ms. Schultz stated that the subject property is located within a historical preservation overlay and the Commission has strongly discouraged attached garages which would allow for less of the garage to cover the subject 20 feet.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **BOND**, the Board voted 4-0-1 (Back, Bond, Van De Wiele, White “aye”; no “nays”; Flanagan “abstains”; none absent) to **APPROVE** the request for a Variance of the maximum permitted building coverage area of the rear setback from 300 square feet to 400 square feet, to permit a detached garage (Section 90.090-C.2), subject to conceptual plan 11.14. The Board determines that the following facts, favorable to the property owner, have been established:

- a. That the physical surroundings, shape, or topographical conditions of the subject property would result in unnecessary hardships or practical difficulties for the property owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;
- b. That literal enforcement of the subject zoning code provision is not necessary to achieve the provision’s intended purpose;
- c. That the conditions leading to the need of the requested variance are unique to the subject property and not applicable, generally, to other property within the same zoning classification;
- d. That the alleged practical difficulty or unnecessary hardship was not created or self-imposed by the current property owner;
- e. That the variance to be granted is the minimum variance that will afford relief;
- f. That the variance to be granted will not alter the essential character of the neighborhood in which the subject property is located, nor substantially or permanently impair use or development of adjacent property; and
- g. That the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of this zoning code or the comprehensive plan for the following property:

**W50 LT 3, LEWKOWITZ SUB L13-14 B28 PARK PLACE, City of Tulsa, Tulsa County, State of Oklahoma**

## **21145-B—Don Cooper**

### **Action Requested:**

Modification to a previously approved Special Exception (BOA-21145-A) to permanently allow car sales on the lot in the CS District. **LOCATION:** 8101 East Skelly Drive South **(CD 5)**

### **Presentation:**

**Andrew Shank** came forward to continue his presentation after conferring with his client. Mr. Shank stated that he has discussed the matter with his client and if it is the Board's position that the parking be a clinch pin to get approval the land owner will be willing to comply. Mr. Shank stated that he would respectfully request, based on the six year track record, of the actual use on the subject property, the unique shape of the property abutting the access road Skelly Drive, and the fact that the land owner already has a right-of-way pipe fence was the major concern in 2010. In 2010 people were parking in the right-of-way because of the fencing and it is now out of the way. Based on those factors he would ask that the parking requirement not be a condition of this request and only remove the time constraint.

### **Interested Parties:**

There were no interested parties present.

### **Comments and Questions:**

Ms. Back stated that she realizes she is new to the Board but she not inclined to impose something that is not in the Code. Mr. Van De Wiele stated the Board made that same condition on a case earlier in the day, the car dealership on North Lewis. Ms. Back stated that condition slipped in before she could say something. Mr. Van De Wiele stated that what the Board has seen is a problem with used car lots over packing the lots so it is either a function of limiting the number of vehicles or requiring a parking lot overlay to display the wares. Ms. Back she understands that, but what she is trying to say is that the Board can limit the number of cars or the Board can ask for a good site plan. She is not seeing good site plans because the Board does approve cases per conceptual site plan. She personally is not comfortable with placing the additional limitation on this case.

Mr. White stated that the site plan, if requested, should comply with the parking plan of the City of Tulsa. Ms. Back respectively disagreed with Mr. White.

Mr. Van De Wiele stated that he is not comfortable with issuing a timeless approval. Mr. Van De Wiele stated that for the last year the Board has been applying the parking lot spacing or striping standard.

Ms. Back stated that as a Board member she would like to see better site plans. She is not receiving what she needs to see on the site plans she is receiving. If the applicant

does not tell staff what is going on it sure does not tell the Board what is going on. She would prefer to have better site plans.

Mr. Van De Wiele stated that the subject lot is oddly shaped and may not fit into the parking requirements, but the Board needs to do some limitation. Ms. Back stated that she does not thinking a parking standard as a condition is the best solution, it may be a solution but she does not think it is the best solution. Ms. Back believes receiving better site plans would help the Board. Mr. Van De Wiele the Board was receiving site plans that were hand drawn and it could be determined whether a parking space was five feet wide or 55 feet wide so that is where the placement of the parking condition came into play.

Mr. Van De Wiele stated that with the odd shaped lot he would be inclined to limit the autos to a particular number of vehicles rather the driving aisle limitation.

Mr. White asked the Board if the case should be continued to allow the applicant to present a site plan with the proposed spacing of the cars for sale. Ms. Back stated that if the Board were to ask the applicant the number of cars the Board can look at the size of the lot and calculate how many cars would fit the lot.

Mr. Van De Wiele asked Mr. Shank if he would like to confer with his client again. Mr. Shank answered affirmatively.

**Board Action:**

No Board action required at this time. Mr. Shank will confer with his client.

**22147—Daxton Neal**

**Action Requested:**

Verification of the spacing requirement for an outdoor advertising sign of 1,200 feet from another outdoor advertising sign on the same side of the highway (Section 60.080-F.5); Verification of the spacing requirement for a digital outdoor advertising sign of 1,200 feet from any other digital outdoor advertising sign facing the same traveled way (Section 60.100) **LOCATION:** East of the SE/c of East Reading Street North and North Quaker Avenue East **(CD 1)**

**Presentation:**

**Daxton Neal**, 1416 East 19<sup>th</sup> Street, Tulsa, OK; no formal presentation was made by the applicant but he was available for any questions.

Mr. Van De Wiele stated the Board is in receipt of the application's survey and spacing verification.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On MOTION of WHITE, the Board voted 5-0-0 (Back, Bond, Flanagan, Van De Wiele, White “aye”; no “nays”; no “abstentions”; none absent) I move that based upon the facts in this matter as they presently exist, we **ACCEPT** the applicant's verification of spacing between outdoor advertising signs for either a dynamic display or conventional billboard subject to the existing sign on the site being converted to an on-premise business sign; and subject to the action of the Board being void should another dynamic display and/or standard outdoor advertising sign be constructed prior to this sign; for the following property:

**LT 5, GATEWAY PLAZA RSB PT HUNTER PT BROADVIEW PT T DICKSON, City of Tulsa, Tulsa County, State of Oklahoma**

**21145-B – Don Cooper**

**Action Requested:**

Modification to a previously approved Special Exception (BOA-21145-A) to permanently allow car sales on the lot in the CS District. **LOCATION:** 8101 East Skelly Drive South **(CD 5)**

**Presentation:**

**Andrew Shank** came forward to continue his presentation after conferring with his client. Mr. Shank stated that his client would like to have 30 automobiles on the subject site, and if it proves to be too much he can make minor revisions.

Mr. Van De Wiele asked Mr. Shank how many cars were on the lot currently. Mr. Shank stated there are no cars on the lot currently.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

Mr. Van De Wiele stated that the Board’s practice, particularly where there is a concern about an adverse impact, but with this the Board has seen a track record of success without issue so he would feel comfortable in removing the time limitation.

**Board Action:**

On **MOTION** of **BACK**, the Board voted 5-0-0 (Back, Bond, Flanagan, Van De Wiele, White “aye”; no “nays”; no “abstentions”; none absent) to **APPROVE** the request for a Modification to a previously approved Special Exception (BOA-21145-A) to permanently allow car sales on the lot in the CS District with the condition that there is to be a

maximum of 30 cars for sale parked on the lot and to remove the time limitation. If inclined to approve the requested Modification the Board may consider any condition it deems necessary and reasonably related to the request to ensure the use is compatible with and non-injurious to the surrounding area, meets the previously granted Special Exception and meets the zoning requirements, per code; for the following property:

**BEG 33E & 203.09S NWC SW SW TH E175 S63.54 TO NL R/W I-44 TH SW181.57 NW23.4 N80 WLY18 N93 POB LESS BEG NWC THEREOF TH E27.03 S166.80 SE21.21 TO NL HWY TH SW10 NW23.40 N80 W18 N93 POB FOR ST SEC 13 19 13 .444AC, City of Tulsa, Tulsa County, State of Oklahoma**

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**OTHER BUSINESS**

None.

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**NEW BUSINESS**

None.

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**BOARD MEMBER COMMENTS**

None.

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There being no further business, the meeting adjourned at 4:07 p.m.

Date approved: 10/25/2016

  
Chair