

BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1179
Tuesday, March 14, 2017, 1:00 p.m.
Tulsa City Council Chambers
One Technology Center
175 East 2nd Street

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	OTHERS PRESENT
Van De Wiele, Chair Flanagan, Secretary Back	White, Vice Chair Bond	Miller Moye Sparger Ulmer	Blank, Legal

The notice and agenda of said meeting were posted in the City Clerk’s office, City Hall, on Friday, March 10, 2017, at 8:44 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.

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

MINUTES

On **MOTION** of **FLANAGAN**, the Board voted 3-0-0 (Back, Flanagan, Van De Wiele "aye"; no "nays"; no "abstentions"; Bond, White absent) to **APPROVE** the **Minutes** of the February 28, 2017 Board of Adjustment meeting (No. 1178).

NEW APPLICATIONS

22209—Hall Estill – Hugh Long

Action Requested:

Special Exception for a temporary use as a storage and staging area for construction equipment and materials (Section 50.020-D). **LOCATION:** North of the NW/c of West 14th Street South and South Denver Avenue West **(CD 4)**

Mr. Van De Wiele recused at 1:05 P.M.

Presentation:

Hugh Long, Hall Estill, 320 South Boston, Tulsa, OK; stated the applicant has requested a continuance to April 11, 2017 to allow four Board members to be present with Mr. Van De Wiele abstaining.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **FLANAGAN**, the Board voted 3-0-0 (Back, Flanagan, Van De Wiele “aye”; no “nays”; no “abstentions”; Bond, White absent) to **CONTINUE** the request for a **Special Exception** for a temporary use as a storage and staging area for construction equipment and materials (Section 50.020-D) to the April 11, 2017 Board of Adjustment meeting; for the following property:

LT 6 BLK 3; LT 7 LESS BEG NEC TH SW TO PT APROX 15W SECR E15 N50 POB FOR ST BLK 3; LT 8 LESS BEG NEC TH W APROX 15 SW TO PT 15W SECR E15 EL NE TO PT N25 POB FOR ST BLK 3, CAMPBELL ADDN, T T T ADDN AMD, City of Tulsa, Tulsa County, State of Oklahoma

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

Mr. Van De Wiele explained to the applicants and interested parties that there were only three 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 all three board members to constitute a majority and if any board member voted no today the application would be denied. Mr. Van De Wiele 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.

NEW APPLICATIONS

22202-Osage—Michael Jones

Action Requested:

Variance to permit the expansion of a non-conforming use (neon signage company) to allow a 1,092 square foot storage building on the site (Section 80.040). LOCATION: 915 North 33rd Avenue West **(CD 1)**

Presentation:

Michael Jones, 5109 South Wheeling, #100, Tulsa, OK; requested a continuance to April 11, 2017 so there could possibly be five Board members present.

Interested Parties:

David Shadday, 1318 North Osage Drive, Tulsa, OK; stated he represents the W High Grass Company and they have property adjacent to the subject property. He does not object to the continuance.

Comments and Questions:

None.

Board Action:

On **MOTION** of **BACK**, the Board voted 3-0-0 (Back, Flanagan, Van De Wiele “aye”; no “nays”; no “abstentions”; Bond, White absent) to **CONTINUE** the request for a Variance to permit the expansion of a non-conforming use (neon signage company) to allow a 1,092 square foot storage building on the site (Section 80.040) to the April 11, 2017 Board of Adjustment meeting; for the following property:

N 132' OF S 528' OF W 330' OF SW SW NE, City of Tulsa, Osage County, State of Oklahoma

UNFINISHED BUSINESS

22204—Jack Arnold

Action Requested:

Variance to reduce the street setback from 35 feet to 30 feet (Section 5.030, Table 5-3). LOCATION: 2641 East 65th Place South **(CD 2)**

Presentation:

Jack Arnold, Architect, 7310 South Yale, Tulsa, OK; stated this request is for a minor Variance. He has spoke with the neighbors in the area and has support from the neighbors to the north, east, west which is two households, and one neighbor across

the street supported the request while another neighbor across the street has issues with the request. The hardship in the case is the topography. The lot drops off 24 feet from the middle of the lot toward the rear northwest corner. He does not see any visual impact for the neighbors or the neighborhood in this request. Mr. Arnold thinks the neighbor across the street is afraid that the request, if granted, would interrupt the visual rhythm of driving on the street. Mr. Arnold believes the five feet being requested would not interrupt the visual rhythm. The house would be a story and a half and from the front yard there would be no visual impact.

Mr. Van De Wiele asked Mr. Arnold if the five foot request pertained to the garage. Mr. Arnold answered affirmatively. Mr. Arnold stated the garage is designed to be a side loading garage so the doors will not be facing the street. The main body of the house does set back and five feet is equivalent to two steps, which not make a visual impact especially since it will not be two stories.

Interested Parties:

Blake Johnson, 2640 East 65th Place, Tulsa, OK; stated he represents the home owners Shane and Liz Marchand who could not be available today because of the continuance, and they live across the street from the subject property.

Mr. Van De Wiele asked Mr. Johnson if the Marchand's objected to this request. Mr. Johnson stated that they do object. Mr. Van De Wiele asked Mr. Johnson to explain their objection. Mr. Johnson stated the neighborhood consists of eight properties and each house has relatively shallow front yards. As you drive up the street in the neighborhood it is an expansive view and it is a nice view because all of the other properties have complied with the setback requirement. The property to the west of the subject property, who Mr. Arnold says agrees to the request, has not told him over dinner a week ago that they agree to the request.

Mr. Van De Wiele asked Mr. Johnson if those neighbors had told him whether they opposed it or objected to the request. Mr. Johnson stated those neighbors were neutral so he does not know whether they agree or not. The house directly southwest of the subject property is for sale so those home owners are neutral. The house to the east of the subject property is two years old and they complied with the setback requirement. The lower southeast property is a vacant lot. If the Board allows the Variance it will be an exception that will erode the requirements on that particular lot. To allow the Variance will also erode the requirements on any future construction.

Mr. Van De Wiele stated that each of these types of requests are individual in nature, there is not a precedent set because one house has an exception which means another house does not automatically qualify for the same exception. The Board looks at each individual property and the circumstances of the property to determine whether they qualify for a Variance.

Mr. Johnson stated he believes that by having one exception it may erode the implacability of the other houses. When a person stands on the front porches of these

houses it is a nice expansive view because everybody has complied with the setback requirements. That expansive view adds value to the overall neighborhood. Allowing the five foot exception is only for aesthetic reasons and he does not feel there is any physical problem or barriers with the property and sees no reason to extend it out further. It does not increase the value of the property and it does not increase the value of the neighborhood by extending out farther. It erodes the value of the neighborhood and the house directly across the street by taking away from the expansive view. Mr. Johnson stated that when the applicant purchased the property they knew of the covenant and they could have developed the house architecturally without eroding the covenant.

Mr. Van De Wiele stated that Mr. Arnold has stated the hardship in this case is the topography, and Mr. Van De Wiele referred to the site plan provided in the agenda packet on the overhead screen. In looking at the far southeast corner of the property it appears it is slightly higher than 760 feet above sea level and the far northwest corner it is less than 684 feet above sea level, so there is potentially a 22 foot drop from front to back on the property. There is significant drop off in the back of the property. Mr. Van De Wiele asked Mr. Johnson if he had seen the site plan before he visited with his clients. Mr. Johnson answered affirmatively. Five feet is not a large piece of the garage that is over the setback, and he is surprised that the clients would have that level of response. Mr. Johnson stated that the front yard is narrow and five feet is intrusive into the front part of the neighborhood, and 16% encroachment over the setback affects the visual impact of the neighborhood. Mr. Van De Wiele stated it is not the entire width of the lot and is only utilizing approximately 30 feet. Mr. Johnson stated that the garage is encroaching into the front part.

Mr. Van De Wiele stated that Mr. Johnson may be right because there are turning issues and this is certainly a steeper than typical lot. He would tend to think Mr. Johnson's client's lot is flatter than the subject property. Mr. Johnson stated that both sides of the street have the same issues. Mr. Van De Wiele stated that he thinks it is a small encroachment for the reaction it sounds like the clients are having. Mr. Johnson stated it is because each house in the neighborhood benefits from an expansive view from their front porch because everyone in the neighborhood has complied with the setback requirements.

Mr. Van De Wiele asked Mr. Johnson how the garage being five feet closer would impair his client's view. Mr. Johnson stated five feet is quite a bit sitting out in front of the main portion of the house. Assuming the front door is set in the middle of the proposed house the owner would have that view from the front door but now jutting out from the house is an intrusive garage. Mr. Van De Wiele stated that when looking at the site plan the clients need to realize that the entirety of the house could be shoved all the way to the 35 foot setback when the great majority, or the front door, is going to be set back 55 feet from the street. Mr. Van De Wiele wants to make sure that Mr. Johnson and his clients understand that if the applicant were forced to redraw the plan to respect the entire width of the 35 feet, what would probably happen would be a full blown two-story house all the way to the 35 foot line. Given those two extremes he believes Mr.

Johnson's clients would rather see the proposed house than the alternative. Mr. Johnson did not agree because it sticks out eroding the expansive view.

Rebuttal:

Jack Arnold came forward and stated that he would like to clarify that he did receive a letter from the neighbors to the east approving the request. The neighbor to the west that Mr. Johnson says does not support the request spoke with him (Mr. Arnold) for one hour on the telephone telling him about the previous house, and he stated that he does not oppose the Variance. Another neighbor sent him a letter. The neighbor next door to Mr. Johnson's clients called him (Mr. Arnold) and stated that he did not have any issue and would support the request. Mr. Arnold stated that the house, as proposed, is one plate in height and that was done so the house would fit into the established neighborhood. On the northwest side the topography falls off so much the house will have a lot of exposure so there may be something below that and that is under discussion. Mr. Arnold stated that in his judgment the proposed house will have no impact on the neighborhood other than a positive and will enhance the neighborhood.

Comments and Questions:

Ms. Back stated that she thinks this parcel is a difficult parcel to develop and that is evident from the aerial pictures showing all the retaining walls on properties. She thinks the Variance process is for this particular type of property and she does not have a problem with the five foot encroachment. She can support the request.

Mr. Flanagan agreed with Ms. Back. Mr. Flanagan stated that he has seen Mr. Arnold's work and he does not think Mr. Arnold would do anything detrimental to the neighborhood.

Mr. Van De Wiele stated that the topography makes this very easy and Mr. Arnold has pushed the majority of the house well beyond the building line. The fact that the house is designed with a side entry garage tends to make come out a little farther but remain aesthetically pleasing.

Board Action:

On **MOTION** of **BACK**, the Board voted 3-0-0 (Back, Flanagan, Van De Wiele "aye"; no "nays"; no "abstentions"; Bond, White absent) to **APPROVE** the request for a Variance to reduce the street setback from 35 feet to 30 feet (Section 5.030, Table 5-3), subject to conceptual plan 2.8. The Board finds the hardship to be the topography of the site. The Board finds 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:

LOT-2-BLK-1, TIMBERLANE ROAD ESTATES, City of Tulsa, Tulsa County, State of Oklahoma

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NEW APPLICATIONS

20336-B—Tulsa County – Richard Bales

Action Requested:

Amendment of a previously approved site plan in BOA-20336-A to permit construction of athletic courts and a parking area. **LOCATION:** 5202 South Hudson Avenue East **(CD 9)**

Presentation:

Richard Bales, 2315 Charles Page Boulevard, Tulsa, OK; stated there was an addition of new tennis courts and the interim facility about two years ago the demand for the use of the site is tremendous. So the County is looking to improve the site again and lay out more courts, both indoor and outdoor. The addition would three indoor courts and three outdoor courts with additional parking.

Mr. Van De Wiele asked Mr. Bales what the space where the future courts may be is used for currently. Mr. Bales stated the space is used for croquet and it has been there for a number of years.

Interested Parties:

Chris Ford, 5518 South Lewis Avenue, Tulsa, OK; stated he has a family business on the southeast corner of 51st and Yale. He is speaking in opposition to the plan for several reasons. It takes away from the aesthetics of the garden park and pond. In adding parking it place a lot of traffic in a small area inside the park, and the traffic will be coming out onto 51st Street unprotected. There are three exits for the current facility on Hudson with lights which makes it safer to enter or exit. There does not seem to be a problem with parking, the southeast corner of the parking area is rarely full. They will

take away from the aesthetics of the park with more tennis courts. He thinks this is an unnecessary expansion at this time, especially since it has only been a year or two since the facilities were built.

Rebuttal:

Richard Bales came forward and stated he would like to address Mr. Ford's concerns about the traffic flow. Depending on the time of year parking is a major problem. People will park on Hudson or park on the grass on Hudson and he is attempting to eliminate those issues. The access road off 51st Street referred to will have the new parking lot tied directly into that, and the purpose for that is to create more parking for the property and create another way for people to enter or exit the property. Unless there is something happening in the pond area that traffic for the circle drive is usually light. Mr. Bales stated that traffic is an issue and it has been 18 months since the facility opened which is not a great length of time, but the usage of the facility is tremendous especially with the closing of the Shadow Mountain facility. The croquet courts will be moved but a new location has been identified for them.

Mr. Van De Wiele asked Mr. Bales if the new indoor courts were going to be located in a permanent building and not a bubble type building. Mr. Bales stated it is planned to be a permanent facility. The building will follow the same aesthetic theme; the color is the same; and the brick is close in color as the Community Center Library. Everything has been done to make the building look like it belongs.

Mr. Van De Wiele stated he does have a concern about the pond and the circle drive, and he asked Mr. Bales how necessary is that connectivity between the drive and the parking lot. Mr. Bales stated even before the indoor facility was built there were traffic flow concerns. When entering the property from Hudson and go into the center parking lot by the library and the community center people tend to get bottled up in that area because people park along the curb of the island. When the proposed parking lot goes to the north as shown it is imperative that people have an access to flow more out than into the park. When the library, the community center and the tennis courts are busy there are a lot of people trying to get into the park at the same time.

Ms. Back asked Mr. Bales if the walks, runs and concerts are still going to be held at the park in the area. Mr. Bales answered affirmatively though it may be moved around because it is a viable part of the park and it is what people do there.

Chris Ford came forward and suggested a one way entrance to keep from the traffic being bottle necked, and upgrade the traffic lights. Mr. Van De Wiele stated that even though this is a County budgeted project it must still go through permitting, and when it goes through permitting the project also goes through traffic review.

Richard Bales came forward and stated that the existing entrance could be identified as a one way entrance but unless someone is at that entrance the public will use the entrance as either way.

Comments and Questions:

None.

Board Action:

On **MOTION** of **FLANAGAN**, the Board voted 3-0-0 (Back, Flanagan, Van De Wiele “aye”; no “nays”; no “abstentions”; Bond, White absent) I move to **APPROVE** an Amendment of the previously approved site plan in BOA 20336-A to permit construction of athletic courts and a parking area, per the Conceptual Plan shown on page 4.13 of the agenda packet. The Board finds that the requested Amendment 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:

W795 E875 S1475 N1525 NW LESS BEG 50S & 80W NEC NW TH S29.94 NWLY CRV LF 47.06 E29.94 POB SEC 34 19 13 26.916ACS, City of Tulsa, Tulsa County, State of Oklahoma

22211—Josh Miller

Action Requested:

Variance of the required rear setback in the RS-3 District from 20 feet to 5 feet (Section 5.030). **LOCATION:** 7705 South Xenophon Avenue **(CD 2)**

Presentation:

Josh Miller, 3904 West 107th Court, Jenks, OK; stated the land surrounding the subject property to the east and the south is owned by his parents. There was a $\frac{3}{4}$ acre piece split out of his parents 7 $\frac{1}{2}$ acres. He has cut and filled the land but the topography is such that he was only able to pour a 70 x 90 foot pad for the house. The house will face inward, as will his parents’ house, so the back yard is really the front yard and the street is to the west.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **FLANAGAN**, the Board voted 3-0-0 (Back, Flanagan, Van De Wiele “aye”; no “nays”; no “abstentions”; Bond, White absent) to **APPROVE** the request for a Variance of the required rear setback in the RS-3 District from 20 feet to 5 feet (Section 5.030), subject to the conceptual plan submitted today, March 14, 2017. The Board finds the hardship to be the topography of the site. The Board finds 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:

PRT NE SE BEG 309.74S & 746.86W NEC SE TH S150 W245 N150 E245 TO POB LESS W25 FOR RD SEC 10 18 12 .758AC, City of Tulsa, Tulsa County, State of Oklahoma

22212—Joshua Ritchey

Action Requested:

Special Exception to permit low-impact manufacturing and industry (microbrewery) in the CH District (Section 15.020). **LOCATION:** 418 South Peoria Avenue East (CD 4)

Presentation:

Joshua Ritchey, 418 South Peoria, Tulsa, OK; stated he came before the Board a couple of years ago for a food truck court at the subject location and they have moved on. This brewery will actually be a nano-brewery because there will only be about 500 barrels brewed a year. The use will be a very small impact to the area. The brewery will for a very small niche market with craft beer next to downtown Tulsa.

Mr. Van De Wiele stated the Board has received several e-mails from people in the Pearl District and they all voiced their support and approval of the project.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION of BACK**, the Board voted 3-0-0 (Back, Flanagan, Van De Wiele "aye"; no "nays"; no "abstentions"; Bond, White absent) to **APPROVE** the request for a Special Exception to permit low-impact manufacturing and industry (microbrewery) in the CH District (Section 15.020), subject to conceptual plan 7.15 of the agenda packet. The Board finds that the requested Special Exception will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; for the following property:

LT 1- 4 BLK 1, CENTRAL PARK PLACE, City of Tulsa, Tulsa County, State of Oklahoma

OTHER BUSINESS

None.

NEW BUSINESS

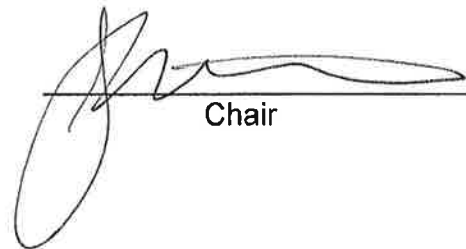
None.

BOARD MEMBER COMMENTS

None.

There being no further business, the meeting adjourned at 2:11 p.m.

Date approved: 3/28/2017


Chair