

BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1194
Tuesday, October 24, 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 White, Vice Chair Back 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 Thursday, October 19, 2017, at 12:30 p.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 **BACK**, the Board voted 5-0-0 (Back, Bond, Flanagan, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the **Minutes** of the September 26, 2017 Board of Adjustment meeting (No. 1192).

UNFINISHED BUSINESS

22332—Ryan Strode

Action Requested:

Variance to allow more than a 25% coverage in the rear setback; Variance to allow a detached accessory building to exceed one story, exceed 18 feet in height and 10 feet at the top of the top plate; Variance to increase the permitted size of a

detached accessory building to 2,070 square feet (Section 45.030). **LOCATION:**
214 East Woodward Boulevard South (CD 4)

Presentation:

Ryan Strode, 4329 East 56th Place, Tulsa, OK; stated he has met with his clients and discussed making changes to the design to try to compromise with the neighbors who oppose the proposed building. The new design lowered the ridge of the roof and the framing of the roof was changed to lower the roof. The ridge was dropped over three and a half feet and now the proposed ridge is only four feet above the existing ridge. Based on general buildings in the area that would be in comparison with existing detached garages adjacent to the property, both to the west and to the east. The upstairs window facing west has been removed which was also opposed at the last meeting. The window on the north side of the building will now be the window for the bedroom.

Mr. Van De Wiele asked Mr. Strode to remind the Board what he is going from and what he is going to. Mr. Strode stated that he is going from a one-story structure, which is about 950 square feet footprint wise, and the footprint of the proposed building is only slightly larger, and a second floor is being added making the new building approximately 1,025 square feet. The original existing building ridge height is 18 feet and the proposed ridge height is at 22 feet. In the redesign of the structure the square footage of the building has been lessened by 100 square feet.

Mr. Van De Wiele asked Mr. Strode to explain his hardship in this case. Mr. Strode stated the hardship is the existing building needs to be razed and the clients want to construct a building that goes with the neighborhood. The clients are also looking for long term caregiver that will possibly be a family member in the future; they want those living quarters to be outside the house and not inside the house.

Mr. Strode stated that revised drawings were sent to the neighborhood's attorney in hopes to have a meeting to discuss the compromise. There was nothing received but an e-mail yesterday afternoon, which stated that the proposed building is still opposed and no thank you.

Interested Parties:

Stephen Schuller, 100 West 5th Street, #1100, Tulsa, OK; stated he represents the same protestants as before and another couple by the name of Lowery who could not be in attendance today. Mr. Schuller stated that Mr. Barnes did send a revised plan on Thursday, but it was not entirely legible, and there was not enough time to study that plan. Mr. Schuller stated the proposed garage structure will tower over the neighbor's properties. Every single property abutting the Barnes' backyard is opposed to this request; they do not want this structure staring down at them over their fences. Mr. Schuller stated that the revised plan is not much of a compromise. The dimensions of the structure have not been seen so he does not know if the representation as to the size of the footprint. The height is at least 20% more than the maximum height limitation for this kind of structure in this zoning. The floor area is still a very large floor

area and accommodates a four-car garage, and by the size of the footprint is about the size of five or six cars. It is not much reduced from what was seen two weeks ago. This request is essentially the maximum Variance; the owners want a very large structure on the property in the backyard overlooking all their neighbor's properties. The windows, by the position of the structure, will still overlook the neighboring properties. There is no hardship for this request. There is nothing unique about this property; physical characteristics, the size, the shape, etc. that compel the grant of any of these Variances. The owners can build a zoning compliant garage without any of the requested Variances. Without a hardship to justify the Variances the request needs to be denied.

Brad McGill, 222 Woodward Boulevard, Tulsa, OK; stated he is the adjacent neighbor to the east. Mr. McGill stated he is not opposed to the property owners replacing their existing two-car garage as long as they abide by the zoning laws. Mr. McGill stated that he objects to is the size of the proposed structure, which is the size of a five-car garage which includes that bay that is proposed to be used as a workshop. The 900-square foot apartment above the garage makes the structure tower over the adjacent neighbors' backyards, robbing them of their privacy and sunlight, exacerbating existing drainage problems, and lowering property values. This structure is much larger than any other garage in the neighborhood. It is out of proportion to the lot and the footprint of the house and is over the size limits allowed by the Zoning Code. The property owner does not have a hardship. Any hardship perceived by the owner is self-imposed due to their accumulation of numerous vehicles and overwhelming amounts of holiday paraphernalia. The existing house is 4,600 square feet and has four levels of living space; a finished basement, a first and second floors, and a finished attic. The property has submitted plans to expand the house to 5,000 square foot making a lot of space for two people and it is plenty of room for storage and a possible full-time caregiver. Mr. McGill stated the property owner has stated the proposed large apartment above the garage is to be used as a residence for a future caregiver. However, it is his understanding is if the caregiver is anyone other than a family member than the apartment becomes a second residence on the lot which is prohibited by the Zoning Code. Mr. McGill respectfully requests the Board reject all the Variances that have been requested. All four surrounding neighbors will suffer a loss if this plan is approved, which is why they are all vehemently opposed to this request. The requested Variances are not justified by any hardship. If approved the imposing structure will lower the quality of life of the surrounding neighbors, negatively impact the property values, and will set a bad precedent for the current neighborhood.

Larry Brumbaugh, 204 Woodward Boulevard, Tulsa, OK; stated he lives immediately to the west of the subject property. Mr. Brumbaugh stated the only other point he would like to make, is that his property to the west and the Lowery's property is at a lower elevation, three feet lower now, so the height of the proposed structure is exacerbating even more for him and the Lowery's. There is also a significant concern over drainage because a lot more water runoff has to be ensued. Mr. Brumbaugh stated that he respectfully asks the Board to reject this application for the reasons stated.

Mr. Van De Wiele asked Mr. Brumbaugh how tall his garage is. Mr. Brumbaugh stated that his garage is a one-story two-car garage and has a lower roof line, so he guesses it is about 16 feet with a small workshop area on the end in the rear.

Rebuttal:

Carl Barnes, 214 Woodward Boulevard, Tulsa, OK; stated he is basically proposing a structure that is 22 feet high, which is four feet higher than the present garage. Mr. Barnes stated that he explained at the last meeting that he has an adult son that has expressed an interest in being a caretaker to him and his wife. Mr. Barnes stated that same function is being performed at the house that is behind and to the east of his property. Mr. Barnes stated that Mr. McGill's garage is 23 feet tall and has a second floor. Mr. Barnes stated that the garage that is behind his house, the Wood home, has a 22-foot high garage also with a second floor. Mr. Barnes stated that his plan has tried to raise the level of the front wall above the area of the garage door and take the roof line from there. That design cut 100 feet off the second floor living area and moved the sheet rock wall inward on the north wall. Mr. Barnes stated the proposed garage will take up no more cement footage than what is presently there because he is currently using a cement slab for parking two cars, so there is no additional water runoff. Mr. Barnes stated that the proposed garage may seem large, but it is just a little bit over the footage that is allowed relating to the setback area and just a little bit larger than the ratio to the house, and he would submit that there is going to be an addition to the house to the east to get the utilities out of the basement. Mr. Barnes stated that he takes 100 feet off the garage and adds 400 feet to the house, which the plans for the house addition have been submitted to the City, that basically makes it a 39 ½ % ratio. If this addition to the house had already been done there wouldn't even be a request for a Variance. Mr. Barnes stated that he thinks his requests for the Variances are reasonable for a very usable structure, and that will not devalue anybody's property. The proposed garage is not going to tower over anything because it is only four feet higher than what currently exists; the difference is that he is trying to make a functional second floor. Mr. Barnes stated that in relationship to the hardship, times change, and we are not in a society anymore where households have one car and garages have more depth. The way the garage is in juxtaposition to the house, there is a good turn to get into the additional garage stalls, if the garage were moved forward there would be a very tight turn. The garage itself must be moved if he were to raise the present garage because it encroaches on an easement now as many of the garages in the area do now. The position of the house as it is on the lot that creates a problem for getting an expanded garage. If this were a two-car garage, there would be no need for a Variance, but he does have a need for additional garage space. Mr. Barnes stated that he believes there is a hardship based on how the house is positioned on the lot and how he could make an expanded garage with the house to still have reasonable access to the garage stalls. Mr. Barnes stated that all he is asking the Board to approve is the Variance related to the setback, the Variance relating to the size of the structure counting first and second floor, and the Variance on the height. Mr. Barnes stated that he believes he has made a good faith effort to compromise. Mr. Barnes stated that this clearly does not interfere with the spirit of the Zoning Code when taken into consideration all the other full two-car two-story garages in the area; many of them

three-car garages and a few four-car garages. There is support for the proposed garage in a two-block area of the project.

Mr. Van De Wiele asked Mr. Barnes if the McGill garage was an attached or a detached garage. Mr. Barnes stated that it is attached.

Comments and Questions:

Mr. Bond stated that at the last meeting there was a consensus about the affability of a hardship regarding the height, four feet difference in what exists now and four feet in this going forward, he does not see that will block out the sun. Mr. Bond stated he does not see the difference what four feet will make now or later. There is a small increase, it is nothing massive and in looking through the history there are two houses in the same neighborhood where the Board granted the same relief. Mr. Bond stated that to him it looks in conformance with the neighborhood, and he does understand that the neighbors have an issue, but he also understands that there is a large number of two-story garages in the neighborhood that predated the Zoning Code by 50 years in some cases. In his mind, that is simply part of the character of the neighborhood. Mr. Bond stated that he is in favor of this request.

Ms. Back thanked the applicant for redesigning and listening to what the Board had to say because she knows that was an expense. Ms. Back stated that she is having a difficult time with the four-car garage versus the three-car or two-car garage. Ms. Back stated that the Board must look at each case on its own and the topography in the area does cause an impact on the neighbors. Ms. Back stated that she is still on the fence.

Mr. Van De Wiele stated that he is closer to where Ms. Back is. Mr. Van De Wiele stated that part of the proposed building will be moving farther away from the Lowery home, but it is certainly going to get closer to the Brumbaugh home. Mr. Van De Wiele stated that he thinks this is a little too big all the way around and it covers more of the backyard than it needs to. Mr. Van De Wiele stated that he thinks garages are taller, so he is not so hung up on the height, but given the totality of the garage he struggles with it from the hardship standpoint.

Mr. Flanagan stated that in his opinion the structure is too big. Mr. Flanagan stated that where he is struggling is the hardship, a hardship that is not self-imposed.

Mr. White stated he understands the objections of the neighbors to the height of the proposed garage, but there is no provision or guarantee for a line of sight in the State Statutes.

Mr. Bond stated this neighborhood and house predated the very first Zoning Code, and predated the City of Tulsa's corporate boundaries. The Board has granted hardships for that in the past and he thinks the angle of the garage and the ability to back out of the garage in his mind is similar to what the Board grants on a regular basis for hardship.

Mr. Van De Wiele agreed. Mr. Van De Wiele stated that there is definitely a hardship to rebuild and relocate the garage if it were only a height issue. Mr. Van De Wiele does not see how the Board can get around the self-imposed nature of the overall mass of the proposed structure and the desire to have more storage.

Ms. Back stated that with the topography change in this specific case she thinks this is why the scale of the building difficult for her.

Board Action:

On **MOTION** of **BOND**, the Board voted 4-1-0 (Bond, Flanagan, Van De Wiele, White "aye"; Back "nay"; no "abstentions"; none absent) to **CONTINUE** the request for a Variance to allow more than a 25% coverage in the rear setback; Variance to allow a detached accessory building to exceed one story, exceed 18 feet in height and 10 feet at the top of the top plate; Variance to increase the permitted size of a detached accessory building to 2,070 square feet (Section 45.030) to the November 7, 2017 Board of Adjustment meeting; for the following property:

E 50 LT 1 W 50 LT 2 BLK 4, SUNSET PARK AMD, City of Tulsa, Tulsa County, State of Oklahoma

22338—Jerry Hine

Action Requested:

Variance to allow the combined total of detached accessory structures to exceed 500 square feet (Section 45.030-B). **LOCATION:** 14 South 69th Avenue East (**CD 3**)

Presentation:

Jerry Hine, 14 South 69th East Avenue, Tulsa, OK; stated to the north of the subject property there is a used tire store and a car lot. The used tire store keeps the tires outside and when it rains the tires fill up with water then mosquitos breed so he cannot go outside to enjoy his property. He has tried to sell the property, and no one is interested. The property that adjoins to the west was found to be a meth lab and has been seized by the Federal Marshalls, and now there are homeless people living in the house. The property to the south has an addition to the garage that is about three feet from the property line running east and west. The subject property is 130'-0" x 130'-0" and the storage units come to 1/2% of the square footage of the property.

Mr. Van De Wiele asked if the storage units had been on the property for awhile. Mr. Hine stated the property has been in his family for many years, and his parents left it to him. The subject property has been used for storage for many years.

Mr. Van De Wiele asked Mr. Hine how it came that he needed to file the request with the Board of Adjustment. Mr. Hine stated that he received a ticket for having a mobile storage unit on the subject property. The mobile home has never been lived in and it is

not set up to be lived in and it is not planned to be lived in. The mobile home has always been a construction office and a place to store tools and parts while working on a job site. Mr. Hine stated that he was a HUD and FHA contractor for many years, and now at the age of 76 he cannot work as many hours as he used to as a young man. Mr. Hine stated that he has done work on the exterior of the house and is now ready to start on the interior of the house, so he needs a place to store his personal belongings and his tools during the remodel.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION of BOND**, 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 the combined total of detached accessory structures to exceed 500 square feet (Section 45.030-B), subject to conceptual plan 3.9 in the agenda packet. The Board finds the hardship to be that the house was built originally outside the city limits of Tulsa, and the unique circumstances of the neighbors. 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:

LT 7 BLK M; N 80 LT 10 BLK M, CRESTVIEW ESTATES SECOND, City of Tulsa, Tulsa County, State of Oklahoma

NEW APPLICATIONS

22343 – Joyce Younacha

Action Requested:

Special Exception to allow a bed and breakfast (short-term rental) in the RS-3 District (Section 5.020). **LOCATION:** 4414 East 14th Place South (**CD 4**)

Presentation:

Phil Baker & Joyce Younacha, 11004 East 11th Place, Tulsa, OK; Mr. Baker stated that he purchased the property as an investment and they would like to be able to rent it as a short-term rental and they would like to be able to use the subject property for their own purposes such as visiting family.

Mr. Van De Wiele asked Mr. Baker if he had any contact with the neighbors. Mr. Baker answered no. Mr. Baker stated that he knows the next-door neighbor because she rents, and he knows the electrician two doors away because he has worked on the subject property.

Mr. Van De Wiele asked Mr. Baker if he had any discussion with either of these neighbors about the request. Mr. Baker answered affirmatively and stated they do not have any objections.

Mr. Van De Wiele asked Ms. Moyer if she had heard from anyone either in favor or in opposition to this request. Ms. Moyer stated that she had not heard from anyone.

Interested Parties:

There was one interested party present who had no objection to the continuance.

Comments and Questions:

Ms. Back stated that she used to live close to this neighborhood and this house is right across the street from the fairgrounds, it is not in the middle of the neighborhood, so she would support this request.

Mr. Bond stated that he does not think this will be injurious to the neighborhood, and the biggest evidence the Board can look to in his opinion is the neighbors who not present today. Mr. Bond stated he can support this request with a five-year time limit. Mr. Bond thinks there has been a misconception in matters such as this. The Board does not issue citations, all the Board does is adjudicate them. All the Board can do is adjudicate the Zoning Code that the City Council writes, and until the City Council writes the Code this Board cannot make law up on their own. The Board does the best they can with what they have. Mr. Bond stated he is in favor of this request.

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 **Special Exception** to allow a bed and breakfast (short-term rental) in the RS-3 District (Section 5.020), subject to the following conditions of a five-year time limit from today through October 23, 2022. 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 8 BLK 10, ADAMSON HGTS ADDN, City of Tulsa, Tulsa County, State of Oklahoma

22344—Roberto Moran

Action Requested:

Special Exception to permit Wholesale Distribution and Storage in the CS District (Section 15.020). **LOCATION:** 13131 East 11th Street South (**CD 6**)

Presentation:

Roberto Moran, 4606 South Garnett Road, Tulsa, OK; stated the subject property is 1.6 acres is located on the northeast corner of 11th Street and 131st East Avenue. All the boundaries of the property, except the north portion, are in the CS zone. The northwestern corner of the property is four feet lower than the southeastern corner. Currently there are three buildings each of which is about 5,500 square feet but due to the existing storm sewer line, in the pre-development meeting Mr. Michael Holmes recommended that the site should have an onsite detention which will eliminate the building located on the northwestern corner of the property, which will then be used as a parking lot water retention area.

Mr. Flanagan left the meeting at 2:11 P.M.

Mr. Moran stated that each building has a total height of 30 feet and one large dock area to accommodate a 55-foot semi-trailer. There are also small ramps to load and unload produce from small straight body trucks. Each building will have an office, electrical rooms, restroom, a janitorial closet and a handicap ramp as necessary.

Mr. Flanagan re-entered the meeting at 2:13 P.M.

Mr. Moran stated that in order to minimize obstructing 11th Street traffic there will be a large 36-foot wide by 80-foot long entryway where semitrailers will be temporarily staged, and there will be a similar condition when exiting on to 131st East Avenue.

Mr. Van De Wiele asked Mr. Moran if his site-plan will be changed now that he knows he will be losing the building on the northwest corner of the subject property. Mr. Moran stated that it may change a little bit, but it depends on the calculations of the runoff water. At this point, maybe the building on the upper north portion of the property will become an ell shaped building.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **BACK**, the Board voted 4-0-1 (Back, Bond, Flanagan, Van De Wiele "aye"; no "nays"; White "abstaining"; none absent) to **APPROVE** the request for a Special Exception to permit Wholesale Distribution and Storage in the CS District (Section 15.020), per the conceptual architectural site plan shown on page 5.13 of the agenda packet. The approval is subject to the following conditions, that the total square footage on site not exceed the total square footage depicted on 5.13, understanding the site plan will move due to storm water requirements. 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:

E305 S360 E/2 E/2 SW SW LESS TR BEG SECR SW SW TH N359.69 W80 S159.76 W52 S200 E132 POB SEC 4 19 14 1.62ACS, City of Tulsa, Tulsa County, State of Oklahoma

22345—Josh Friesenhahn

Action Requested:

Variance to allow more than 30% coverage in the rear setback (Section 90.090-C-2); Variance to allow a two-story accessory structure that exceeds 18 feet in height and exceeds 10 feet to the top of the top plate (Section 90.90.C); Variance to allow a detached accessory structure to exceed 500 square feet in floor area (Section 45.030-B). **LOCATION:** 2704 South Cincinnati Avenue East (**CD 4**)

Presentation:

Josh Friesenhahn, 36 East Cameron Street, Tulsa, OK; stated the plans depict a garage apartment, but it is not an apartment nor is it living quarters. Currently behind the house there is a deteriorated garage that has washer and dryer hook ups. He is proposing a garage with a laundry room and upstairs would be an area with a kitchen and living room.

Mr. Van De Wiele asked Mr. Friesenhahn how big the existing building is versus what is proposed to be built. Mr. Friesenhahn stated that currently the roof height is about 16 feet and it is a single-story building. He is proposing a two-story building that has top roof pitch of 28 feet. Mr. Van De Wiele asked Mr. Friesenhahn what the square footage will be. Mr. Friesenhahn stated the top floor will be 650 square feet and the same with the bottom. Mr. Friesenhahn what is in the existing structure. Mr. Friesenhahn stated it is a garage with washer and dryer and it is about 700 square feet.

Mr. Van De Wiele asked Mr. Friesenhahn if the new structure will have parking. Mr. Friesenhahn answered affirmatively.

Mr. Van De Wiele asked Mr. Friesenhahn if what he is proposing to build will be approximately the same height, size and scale as the other detached structures in the area. Mr. Friesenhahn stated that his proposed building will actually be smaller than the one next door. Mr. Friesenhahn stated there are many houses in the area that have two-story structures.

Mr. Van De Wiele asked Mr. Friesenhahn if he had any contact from any of the neighbors. Mr. Friesenhahn stated that he has not.

Mr. Flanagan asked Mr. Friesenhahn if had any plans on using the proposed structure as an apartment to lease out. Mr. Friesenhahn answered no.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **BOND**, 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 more than 30% coverage in the rear setback (Section 90.090-C-2); Variance to allow a two-story accessory structure that exceeds 18 feet in height to allow 29 feet and exceeds 10 feet to allow 17'-10" to the top of the top plate (Section 90.90.C); Variance to allow a detached accessory structure to exceed 500 square feet in floor area to allow 1,574 square feet (Section 45.030-B), subject to the conceptual plan submitted today, October 24, 2017. The Board has found the hardship to be the narrowness of the lot, adjoining park property, and that the house and neighborhood predate the existence of the City Zoning Code. 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:

LT 6 BLK 13, SUNSET TERRACE, City of Tulsa, Tulsa County, State of Oklahoma

22346—Eller & Detrich – Nathalie Cornett

Action Requested:

Variance of the permitted lot area, lot width, and land are per dwelling unit to permit a lot-split; Variance to reduce the required building setback from an interior lot line (Section 5.030-A). **LOCATION:** 3114 West 48th Street South (**CD 2**)

Presentation:

Nathalie Cornett, Eller & Detrich, 2727 East 21st Street, #200, Tulsa, OK; stated today's requests are for small Variances of the bulk and area requirements for the subject property which is in a RS-3 District. Currently the lot is a non-conforming lot. The adjacent property to the west was put up for sale and when that happened it was discovered that the house on the subject property encroaches onto the other lot. To fix the encroachment the plans are to split off part of the adjoining lot to the west and combine it under Tract 1.

Mr. Van De Wiele asked Ms. Cornett if it was the twelve-and-a-half-foot strip was the piece of land getting split. Ms. Cornett answered affirmatively.

Ms. Cornett stated that even with the split and the combination the property will still not meet the bulk and area requirements in RS-3. The width is being increased from 45 feet to 57.6 feet and the Code requires 60 feet. Essentially, the lot will still be non-conforming but less so.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **BACK**, the Board voted 4-0-1 (Back, Bond, Flanagan, Van De Wiele "aye"; no "nays"; "abstaining"; White absent) to **APPROVE** the request for a Variance of the permitted lot area, lot width from 60 feet to 57.6 feet; Variance of the lot area and lot area per dwelling unit requirement from 6,900 square feet to 5,184 square feet; Variance to reduce the required building setback from an interior lot line from five feet to four feet (Section 5.030-A), subject to the conceptual plans 7.7 and 7.8 of the agenda packet. The Board finds the hardship to be the lot configuration even when adding square footage still will not meet the minimum square footage requirements of the RS-3 District. Even with these conditions the lot will still remain a legal non-conforming lot. 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:

N 90 OF LTS 5 & 6 BLK 6, CARBONDALE, City of Tulsa, Tulsa County, State of Oklahoma

22347—Izrael Quezada

Action Requested:

Special Exception to permit a detached house located in a CH District (Section 15.020). **LOCATION:** 1605 South Cincinnati Avenue East (**CD 4**)

Presentation:

Izael Quezada, 8107 East Admiral Place, Tulsa, OK; stated this request is to allow an addition to the front of the existing house. There is a porch on the front of the house that was built improperly and that is where the new addition will be.

Mr. Van De Wiele asked staff if the addition would cause a square footage issue. Ms. Miller stated the property is zoned CH so there should be no problem.

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"; "abstaining"; none absent) to **APPROVE** the request for a Special Exception to permit a detached house located in a CH District (Section 15.020), subject to conceptual plan 8.8, 8.9 and 8.10 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:

S35 FEET 2 INCH W 120 LT 4 BLK 12, MAPLE PARK ADDN, City of Tulsa, Tulsa County, State of Oklahoma

22348—Demetrius Bereolos

Action Requested:

Special Exception to allow a bed and breakfast (Airbnb) in an R District (Section 5.020); Variance to allow cooking facilities in a guestroom in a bed and breakfast (Section 40.060-D). **LOCATION:** 1929 South Cheyenne Avenue West (**CD 4**)

Mr. Bond recused and left the meeting at 2:38 P.M.

Presentation:

Demetrius Bereolos, 1929 South Cheyenne, Tulsa, OK; stated the Airbnb is called SoChey Airbnb, because it is located on South Cheyenne. It is a high-quality bed and breakfast and is operated in a detached cottage in the rear of 1929 South Cheyenne. Since January 1, 2016 the bed and breakfast is listed on Airbnb, the national website. The bed and breakfast has two guest rooms and an attached patio. The reservation requirements listed at the Airbnb website stated the occupancy is limited to two guests, that smoking is allowed outside the cottage, and that SoChey is pet friendly. The bed

and breakfast is equipped with fire extinguishers, smoke detectors, a carbon monoxide detector, and each guest room has a door in which to exist. There is a commercial insure rider from Southwest General Agency approved by State Farm Insurance Company that is attached to his homeowner policy and provides liability coverage for the bed and breakfast and surrounding area. Mr. Bereolos stated that his Airbnb is a top-rated Airbnb in Tulsa with 98% of the reviews from his guests at the Airbnb website being five-star reviews. Mr. Bereolos believes the application for the bed and breakfast is in harmony with the spirit and intent of the Tulsa Zoning Code, and he believes it is not injurious to the neighborhood or otherwise detrimental to the public welfare. Mr. Bereolos stated that he reviewed Section 40-060 and finds himself in substantial compliance with those elements. Mr. Bereolos stated that he limits the stay of any guest to 12 consecutive days and require permission from one of the owners for a stay of more than 12 days. Mr. Bereolos stated that he has maintained a guest register for the guests for the two years and it is available for review by anyone interested. There is no signage for his Airbnb and it does not in any way impair or violate the architectural style and residential nature of the surrounding neighborhood. No meals are served to overnight guests and there is no request for approval of any onsite events. The bed and breakfast is located in the rear of the subject lot. There is no additional stress on otherwise limited on street parking on the neighboring portion of South Cheyenne, because his guests park on a concrete driveway immediately north of the Airbnb and behind the neighboring home which was made available through an agreement with Monica Johnson who is the owner of the neighboring house. To date there has not been an Airbnb guest who has had more than one vehicle or has not been able to use the parking accommodations. Mr. Bereolos stated that he and his wife live onsite which allows them to constantly monitor the bed and breakfast, and deal with issues that may affect the neighbors. Mr. Bereolos stated that he has lived in the neighborhood for more than 60 years, and he and his wife have a very good relationship with the neighbors. Mr. Bereolos stated that he has spoken to the first five or six neighbors that are within the mailing area and they have been in agreement; most of them did not even know that he was running a bed and breakfast because it is run so flawlessly. Mr. Bereolos stated that he encourages his guests to use local restaurants and visit local attractions, and the guests are provided a 60-page book of restaurants and other attractions in Brookside and other areas of downtown Tulsa. Mr. Bereolos stated the literal enforcement on the limitation on cooking facilities, the Code appears to be silent as to the intended purpose of what limiting cooking facilities mean. If the intended purpose is fire safety, he certainly has safe appliances and a smoke detector and fire extinguisher. The condition leading to the need of the requested Variance is very unique to the property in which the configuration of the cottage will not permit the placement of the kitchen and the additional guest room. The subject cottage has been used as mother-in-law quarters in the past and he has decided to now use it as an Airbnb. Mr. Bereolos presented a drawing of the layout cottage and stated it is the same layout when his parents purchased the property in 1955; the appliances were there and in the same place; the alleged difficulty was not created or self-imposed. Mr. Bereolos stated that the Airbnb is located on the edge of the block as it is the last house on South Cheyenne with only a vacant lot sitting next to it; it is on the periphery of South Cheyenne. There was another bed and breakfast on South Cheyenne that came before the Board, BOA-

22306, which the Board approved for a five-year term limit for a Special Exception which was also located in a cottage in the rear of the owner's property, and that bed and breakfast is located in the middle of a neighborhood. He would request the Board approve a five-year Special Exception to allow his bed and breakfast, and approve a Variance to Section 40.060 of the Code to allow the cooking facility.

Mr. Van De Wiele asked if the guests were accessing the parking area via the alleyway or the neighbor's driveway. Mr. Bereolos stated the guests access the parking area through the alley and then pulling into the neighbor's driveway. Mr. Van De Wiele asked Mr. Bereolos if the neighbor's driveway was a rear attaching driveway. Mr. Bereolos answered affirmatively. Mr. Van De Wiele asked Mr. Bereolos if the alleyway was one-way or two-way. Mr. Bereolos stated that he thinks it is one-way because it is narrow. Mr. Bereolos stated there is also optional parking available that is east of the alley, there is a variety of asphalt spaces that are not in use on the weekend.

Mr. Van De Wiele asked Mr. Bereolos if he grew up in the house located on the subject property. Mr. Bereolos stated that he has lived there all his life.

Mr. Van De Wiele asked Mr. Bereolos what the subject building was used as when he was growing up there. Mr. Bereolos stated that the building has been used as rental property, as storage, a place for friends and relatives to stay and his father lived in it for awhile as opposed to going into a nursing home.

Mr. Van De Wiele asked Mr. Bereolos if the bedroom had always been in the kitchen or was it in the small bedroom where the bathroom is located. Mr. Bereolos stated that it has been in both places; essentially, he is dealing with it the way it was structured.

Interested Parties:

There were no interested parties present.

Comments and Questions:

Mr. Van De Wiele stated that he is conflicted in this case, but the fact that it is on the edge of the property helps. The fact that Mr. Bereolos and his wife live there helps. Mr. Van De Wiele stated that his concerns are that it has been operating for two years without coming to the Board, because Mr. Bereolos has been here before and knows the Code. Mr. Van De Wiele stated that he is surprised not to see neighbors in attendance because he knows this neighborhood has been adamantly opposed to commercial influx, i.e., the residential multi-family development of the lot next door was a heated discussion and it was definitely a feel of "any more cars in the neighborhood is a problem". Mr. Van De Wiele stated that he is having more concerns over the Variance hardship.

Ms. Back stated that she also remembers from those conversations that the neighbors did not want any additional traffic in that area. Ms. Back stated that she too has concerns about the requested Variance. This structure was intended to be living

quarters not short-term rental. She is also having difficulty with it not being self-imposed.

Mr. Flanagan stated that he does not have any issues with the cooking facilities whether they were installed 50 years ago or earlier. Mr. Flanagan stated this is on the periphery and the neighbors were given a chance to show up to voice their concerns and they are not here. Mr. Flanagan stated that it would be good to have some guidance from the City. Mr. Flanagan stated that he would support this request.

Mr. Van De Wiele asked Mr. Flanagan what he considered the hardship to be in this case. Mr. Flanagan stated he does not have an answer to that.

Mr. White stated this particular area has been the subject of a lot of controversy, and Mr. Bereolos has been here speaking out in those cases and his comments are appreciated. Mr. White stated that his concern is not necessarily with the bed and breakfast but with the cooking facilities.

Mr. Van De Wiele stated that he even asked staff about whether the Board can grant a Variance for those type of conditions. Mr. Van De Wiele stated that he received a positive answer in that yes, the Board can but there still has to be a hardship.

Ms. Miller stated that staff has looked at that. It is not a use. The similar situation would be outdoor storage in CS, and a person can request a Variance for that.

Mr. Van De Wiele asked Ms. Miller if she knew the point in not having a cooking facility in a bed and breakfast is. Ms. Miller thinks that in the Code it goes to the traditional bed and breakfast where there is a dining room where everyone eats breakfast. It is really a throwback to the old concept that has been moved so far away from now. Ms. Miller stated the hardship could that the cooking facility prohibition was really meant for a different type of bed and breakfast, and bed and breakfast is the most closely related definition that staff has for a use.

Board Action:

On **MOTION** of **BACK**, the Board voted 3-1-1 (Back, Flanagan, White "aye"; Van De Wiele "nay"; Bond "abstains"; none absent) to **APPROVE** the request for a Special Exception to allow a bed and breakfast (Airbnb) in an RS-4 District (Section 5.020); Variance to allow cooking facilities in a guestroom in a bed and breakfast (Section 40.060-D). The Board finds the hardship to be this structure was originally designed constructed as a detached garage apartment with cooking facilities already existing in the structure. This is approval is subject to a time limit not to exceed five years from today's date, October 24, 2017, through to October 23, 2022. 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. In approving the Variance, 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:

LT 19 & N 22.5 LT 20 BLK 6, BUENA VISTA PARK, City of Tulsa, Tulsa County, State of Oklahoma

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

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OTHER BUSINESS

None.

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NEW BUSINESS

None.

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BOARD MEMBER COMMENTS

Mr. Van De Wiele stated that Ms. Briana Ross is in the audience and she will be on the Board for the next three years or so, because Mr. White is retiring. Mr. Van De Wiele stated that today is Mr. White's last meeting and there will be a small reception upstairs.

Mr. Van De Wiele thanked Mr. White for his many years of service. Mr. Van De Wiele stated that from the first day he was on the Board he (Mr. White) was infinitely helpful in

helping him understand that which the Board does. Mr. White has been an anchor to the entire Board and he thanked David tremendously.

Ms. Back stated that she has had the pleasure of working with David on both sides of the counter. Ms. Back stated that from day one David took her under his wing and taught her how to write great staff reports and explained what the Board needed to be able to make wise decisions. Now she has had the honor of working beside David and it has been a sheer pleasure and she thanked him for all his dedication.

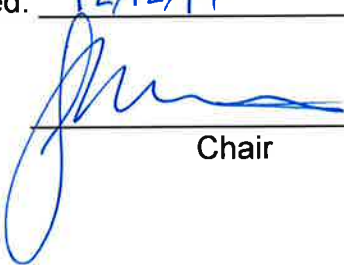
Mr. Flanagan stated that from the day he came onto the Board David was the welcoming committee and made him feel right at home. Mr. Flanagan stated that he is proud to call David a friend and thanked David and he will be missed.

Mr. Bond stated that David as a member of the Board of Adjustment, a member of law enforcement and someone who has served his community his entire life he is truly someone who is an example to everybody in Tulsa. Mr. Bond stated that he is honored to be in Tulsa and to get know David. Mr. Bond looks forward to continuing the friendship with David after this.

Ms. Miller stated that she has managed in her 20+ years in planning, tons of Boards and Planning Commissions and committees, and no one has ever prepared so diligently and done so much research and come such great insight. Ms. Miller really admires that and appreciates that.

Mr. White thanked everyone very much for the very nice comments. It has been an honor and a pleasure to serve for 22 years on the Board of Adjustment. As he drives around the City and looks at the 6,000 cases that the Board has ruled on he is very proud of the City of Tulsa. What this Board is doing, and he supports all the Board's actions. The whole purpose was to give some degree of order to development in the City of Tulsa, and he thinks the Board has succeeded most admirably. Mr. White thanked his wife, JoAnne, for putting up with his service on the Board for the 22 years.

There being no further business, the meeting adjourned at 3:16 p.m.

Date approved: 12/12/17


Chair