

BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1097
Tuesday, July 9, 2013, 1:00 p.m.
Tulsa City Council Chambers
One Technology Center
175 East 2nd Street

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	OTHERS PRESENT
Henke Snyder Tidwell, Secretary Van De Wiele White, Vice Chair		Miller Back Sparger Walker	Swiney, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Wednesday, July 20, 2013, at 8:40 a.m., as well as at the Office of INCOG, 2 West Second Street, Suite 800.

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

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

MINUTES

On **MOTION** of **TIDWELL**, the Board voted 3-0-2 (Henke, Tidwell, Van De Wiele "aye"; no "nays"; Snyder, White "abstaining"; none absent) to **APPROVE** the **Minutes** of the June 11, 2013 Board of Adjustment meeting (No. 1095).

On **MOTION** of **TIDWELL**, the Board voted 4-0-1 (Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; Henke "abstaining"; none absent) to **APPROVE** the **Minutes** of the June 25, 2013 Board of Adjustment meeting (No. 1096).

UNFINISHED BUSINESS

21538—Nathan Cross

Action Requested:

Variance of the front yard setback from 60 feet to 47.5 feet in the RS-1 district for construction of a new single-family residence (Section 403.A, Table 3). **LOCATION:** 4421 South Atlanta Place East (CD 9)

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

Presentation:

Nathan Cross, 502 West 6th Street, Tulsa, OK; stated this variance request is part and parcel with the vacation of a right-of-way in front of the subject property. The request for the variance of 47.5 feet is under the presumption that the right-of-way will be taken down to 40 feet from 50 feet. The existing right-of-way is 50 feet in front of the subject property and the City of Tulsa has agreed to vacate ten feet of that as long as the property owner gives them the easement back. So the new centerline would be pulled from the new 40 foot right-of-way. The first reading of the vacation of the right-of-way will be on either the first or the eighth in front of the Council.

Mr. Van De Wiele asked Mr. Cross about the right-of-way on the neighboring properties. Mr. Cross stated that to the south the right-of-way is actually 50 feet, and to the north the right-of-way is 30 feet. From the subject property northward the entire right-of-way is 30 feet. The subject property is approximately 35 feet shallower than the surrounding properties. There is a significant depth issue even before the 20 foot is taken off the front of the property.

Mr. Henke asked Mr. Cross when the area was platted. Mr. Cross stated it was platted in 1923.

Mr. Cross stated there is a reason the subject property is vacant and it is because it is a small lot. With the 20 feet across the front the lot is almost undevelopable because of the depth of the lot. There is still a 25 foot setback on the rear of the lot so the building line is not encroached upon.

Mr. Van De Wiele asked why property in the rear of the subject property is so much larger causing the shallowness of the subject property. Mr. Cross stated that he did not know why the other lot is so much larger, and he did not know if it was platted in that manner or not.

Mr. Cross continued to say that the property owner wants to line up with the rest of the homes on the street, and not be any closer to the street than they are.

Interested Parties:

Paul Zachary, City Engineer, City of Tulsa, 2317 South Jackson, Tulsa, OK; stated there is a full width curbed and guttered street on the south end of the subject street, and on the north end of the same street the residents have a bar-ditched street. When the request first came to the City it was a request to close the full 20 feet on the applicant's property. The neighboring properties on each side of the subject property have no right-of-way; they are based on 30 feet and goes to the west. The Fire Department came to the City and stated the proposal was not acceptable to them and they would not accept any closer. This request has also been before the City Council and at this meeting the City requested tabling the applicant's request to see what could be done and exactly what the issues were. Mr. Zachary met with the Fire Chief and he agreed to an 18 foot wide roadway as a minimum. The residents on the west side are platted and the right-of-way is dedicated so the City feels those residents have given all they can so the widening would be to the east. The City surveyed the properties and found that an 18 foot wide roadway, transitioning from the south going across the applicant's property and the two properties immediately to the north of the subject property transitioning back into the existing pavement to the north of the subject property is acceptable. As far as the City is concerned the issue is the 18 foot wide roadway and can it be fit into neighborhood properly. The Fire Department has reviewed the proposed plan and they will not object to the 18 foot road right-of-way. This request will be going back before the City Council and the City will be retaining an easement over the 20 feet of property and the City does not anticipate doing anything more in the area.

Greg Hanger, 4416 South Atlanta Place, Tulsa, OK; stated he lives across the street and to the north of the subject property, and he is representing about 58 neighbors. The neighbors support the construction of a new home. The neighbors support the City's in-fill project. The subject property was initially 101 feet by 125 feet and was purchased for approximately \$100,000.00 which is considerably less than the market rate for other property in the area. He and the neighbors have a concern over how the vacation of the right-of-way was described in the staff comments. Staff comments reflect that there will be 20 feet of right-of-way closed with a ten foot road easement, which would increase the lot size to 121 feet by 125 feet.

Ms. Back stated that staff did not have all the numbers at the time of writing the case report because the plan was still being designed. Therefore, staff used the numbers that were available to them to write the case report. The number that was advertised is the number that the Board would make the ruling on. The document that was just received from Mr. Cross, that Mr. Zachary also used, is the document that would be used to attach the Board's approval to, which is the 47.5 feet that was requested.

Mr. Hanger stated that if that is the case, there is still the issue of a hardship for this request. The lot size with the additional ten feet of right-of-way would still be a conforming RS-1 lot and would not be an undersized piece of property. On June 30, 2012 there was an application before the City Council to vacate the entire right-of-way and he believes what was wanted was actually the 20 feet. As Mr. Zachary pointed out, that was turned down primarily due to fire and safety issues. There was, also, a claim in the application that the right-of-way was not used but, in fact, it is used.

Mr. Van De Wiele asked Mr. Hanger if the neighbors thought the entire street was to be closed. Mr. Hanger stated that at one point the neighbors did think the entire street would be closed but found out differently later.

Mr. Henke stated that the subject property is considerably shallower than other lots in the neighborhood. Mr. Hanger stated that he would use the word different but he does not think the lot is extraordinarily small, and the math for the square footage bears that out. There are only two lots, the two lots immediately north of the subject property that does not have a right-of-way. That is why the road, or the right-of-way, narrows down to 30 feet at that point, but the street does widen out as it goes north and goes south.

Mr. Henke stated that he is referring to the east property line. And if you apply a 1970 Zoning Code to a piece of property platted in 1923, and it is compared to the other neighborhood lots the subject property is out of the ordinary in its depth. Mr. Hanger stated that the subject property is out of the ordinary for the street but it is not extraordinarily small.

Mr. Hanger continued to say that he, nor the neighbors, is opposed to the size of the house but there are some neighbors that think the house is out of character for the neighborhood.

Mr. Henke asked Mr. Hanger what his main concern for the subject property is. Mr. Hanger stated the main concern is that there will be a precedent set of building the house close to the road. Mr. Van De Wiele stated the proposed house would be no closer than the house that is to the north of the subject property.

Mr. Henke asked Ms. Back if Lot 4411, as shown on the map presented on the overhead projector, had been granted a Variance. Ms. Back stated that it had not been granted a Variance. Ms. Back stated that Lot 4416 had been granted a Variance. Mr. Hanger stated that was correct because that was his lot and the Variance was for 1.5 feet. The 1.5 feet that was requested in the Variance was because he had rock installed on his house and that was the width of the rock. Mr. Hanger stated that obviously there are issues in how facts are being presented.

Mr. Henke asked Mr. Hanger if he would be happy if the house were to be set back another ten feet. Mr. Hanger stated that one of the neighbors would like for the proposed house to come out as far as their house. There are other neighbors that to have set out as far as proposed it would be setting a precedent. The house in the

neighborhood are older, and if they should be razed the precedent would be set to have houses closer to the street thus eliminating the front yards. Mr. Henke stated that he did think it would set a precedent because the lot does not have the same right-of-way as the others in the neighborhood. The lot is what is causing the hardship.

Mr. Hanger continued to say that the resident directly across the street from the subject property does not like the idea of the house being that close to them. They would prefer to have the house set farther back. His concern is that if the house is allowed to be built close to the street and it being a two-story house it will appear to be overbearing in the neighborhood. That same resident is not happy with the vacating of the right-of-way because if future improvements to the road are thought about, it could result in the taking of his yard.

Mr. Van De Wiele stated that Mr. Zachary has informed the Board that the road development is going to the east not the west. Mr. Hanger stated that was true and that there was only two feet being discussed, and people of the neighborhood are relatively supportive of the proposed house. The primary point the neighbors are attempting to make is that they are not trying to do anything other than ask the Zoning Code be followed, because a lot of the issues are with the proposed house is the design of the house. If the vacation in District Court is permitted the lot would be square and flat, and of sufficient size. The setback line would actually move from where it is now to in front of the proposed house. The subject property is not excessively narrow, is not excessively shallow, it does not have an odd shape or topography. There is not a hardship for this case because the hardship was created by the builder. The issue is whether the builder can throw out the Zoning Code and build whatever he would want because the lot is a conforming lot.

Mr. Van De Wiele asked Mr. Hanger how much of his argument, and the neighbors argument, is based on the fact that the proposed house is a two-story house proposed to be next a ranch style house. Mr. Hanger stated there are neighbors that are disturbed by that; however, that is not the primary issue. The neighbors are focused on the fact that what is proposed is just not right. The drawings and plans that have been presented are hard to follow, and it does not follow the Zoning Code.

Kendall Johnson, 4347 South Atlanta Place, Tulsa, OK; stated he lives in the third house north of the subject property. The property immediately north of the subject property has a carport that extends out to the point of where the applicant wants the front his house to be. The applicant has created his own hardship by not informing his builder to adhere to the zoning codes. This sort of conduct circumvents the zoning code which is to create a uniform character for the community. The Oklahoma Supreme Court in 1983 said that a hardship created by the owner of a premise constitutes no valid basis for a variance from the zoning ordinance. To allow circumvention of the ordinance by the purposeful creating of a hardship to the landowner, by the landowner emasculates the ordinance as effectively as an appeal. We ask the applicant to speak with his builder and request a plan for a house designed within the zoning code requirements.

Paula Franchi, 4436 South Birmingham, Tulsa, OK; stated she lives behind and east of the subject property and her house is three-quarters of the property line setback. The proposed house cannot go any farther back because of this. Based on information she has received from Mr. Yuen Ho, in the course of his investigation in January 11, 2013, he found that the drawings submitted by the builder were deficient in addressing the setback issues. That investigation was from the beginning of the proposed project. Mr. Ho stated that the architect's drawings did not accurately identify the point of reference to measure the setbacks. All the neighbors are asking is for the setbacks to be enforced, and they do not think they are asking for anything unreasonable.

Mr. Henke asked Ms. Franchi if she had any issues with the City's proposal for the street. Ms. Franchi stated that if that is what good for the community, and they widen it to 18 feet and the City is comfortable with the 18 feet, it is a non-issue. The residents need to trust what the City is proposing is the correct thing to do for the neighborhood. On the same token, the residents need to make sure there is not a precedent set in the community that is loved by all, and lived there for many years.

Mr. Henke asked Ms. Franchi if the applicant cannot move his house closer to her property, and the Board does not grant the request would she want to see a long skinny house built on the property? Ms. Franchi stated that from her perspective the lot is very wide, wider than most because it is 125 feet wide, so the applicant may not have the depth but he does have the width. The lot is a good sized lot and the lot is a buildable lot. It would be nice if the applicant could keep to the character of the neighborhood.

Mr. Henke stated that when the character of the neighborhood is discussed that throws another curve ball into the consideration because 4433 is back considerably more than 4411, in terms of where the houses are to the street. Then it is said that the applicant is proposing not to build any closer to the street than 4411 but what is the character of the neighborhood? Ms. Franchi stated that all the houses on the west side are set back equally with the exception of one house by a foot and a half, which does not make it an eyesore to the neighborhood.

Mr. Henke left the meeting at 1:59 P.M.

Mr. Van De Wiele stated the Board needs to ask the applicant what is the existing house line, and if that line is the carport, if the Board were to revise the plan to show the bulk of the houses corresponding lines. He is surprised that the majority of the residents did not seem to be opposed to the closing the street but the plan as shown for the placement of the house does not offend him. Ms. Franchi stated that is what the residents thought initially until someone became involved that was able to look at the plan with the correct measurements. She does not feel the neighbors should have to do all this investigating that has been done to this point, which has been quite a chore. The neighbors welcome in-fill because it is good for Tulsa. When Mr. Ho suspended

the permit it was due to the deficiencies of the setbacks. Ms. Franchi stated that the applicant should give better and correct information so no one has to second guess the plan. Ms. Franchi does not feel that she or the neighbors are asking for anything that is unreasonable. She also agrees that the hardship was created by the architect proposing to build the house.

Mr. Henke re-entered the meeting at 1:01 P.M.

Rich Wilson, 4411 South Atlanta Place, Tulsa, OK; stated his house is immediately to the north of the subject property. He and his wife have lived in the neighborhood for three years. When they moved in the subject property was fenced in and they assumed it was the back yard of Ms. Franchi's home. The lot was somewhat reasonably maintained and had a storage shed and trampoline on it, but there was no activity on it at all. When the lot went onto the market he looked into purchasing the lot in hopes that it would add value to his home, but the depth of his lot and the subject property was so significant it did not make sense to purchase the subject property. Mr. Wilson stated that his house has a porte cochere and the garage actually angles to east taking it away from the street. The northern corner of his garage would be the closest portion of his house structure to the street. Using simple mathematics he used a tape measure to measure from the middle of the street, he measured 47.5 feet which ended at the very left northern corner of his garage. Looking to the north from that point his house is very much in line with the neighbor's house and is not out of character with that part of the street. His house, the neighbor's house, and the subject property are the only three lots on the narrowest part of the street. At this point what is being proposed, as he understands it, with the proposed home there would be three houses in a line on the same narrow piece of road and would be comparable. Just for comparison purposes, his porte cochere probably juts out another four or five feet in front of his garage.

Rebuttal:

Mr. Nathan Cross came forward and stated that the ten feet that has been under discussion that the neighbors have suggested increase the usable square footage of the subject property, along with the vacation of the right-of-way the City has asked that the property owner grant an easement back to them. So it is a little misleading to say that the full size is usable space because there is still a ten foot strip subject to the City coming in and using it at will basically. The discrepancy of the setback at 47.5 feet accounts for the narrowing the right-of-way. The concern throughout the process is the same as everyone here has experienced, which is how to calculate the plan? The 47.5 feet was arrived at by using the house next door and the drawing of the proposed house used today was done by the applicant's surveyor.

Mr. Van De Wiele asked Mr. Cross if he was wrong, when looking at the prints provided the Board, if the 4411 garage and the most northern corner of 4433 are more or less the same distance east to west. Mr. Cross stated that they appear to be close but he does not know that to be accurate.

Mr. Van De Wiele asked Mr. Cross if the entirety of the proposed home sets east of the 47.5 feet which is represented by a red line on a map presented on the overhead projector. Mr. Cross gave affirmation to the statement.

Comments and Questions:

Mr. White stated that he could support this request provided it did not come out any farther than the corner of the garage at 4411, excluding the porte cochere, if the Board knew the true dimensions. He does have a hard time understanding why the applicant seems to favor the presented house site plan when another suitable plan could be chosen or presented. He is disappointed that there is not more survey data given on the adjacent lots. This case has been continued several times. The neighbors have been in attendance several times and sent in a lot of literature showing their opposition to the proposal. He would not like to see this case continued again but in listening to the arguments presented today, and the Board's comments he thinks maybe it should be continued to have better information presented to the Board.

Mr. Van De Wiele stated that this lot is out of the ordinary with the neighborhood for its depth. With the difference of the road and how everything is playing out, it seems more reasonable for the benefit of the neighborhood for the front façade of the homes, as the road meanders through the neighborhood everything is changing from lot to lot. If he were to see a revised drawing depicting the 111 feet by the 125 feet, assuming the applicant is to receive the extra ten feet, he would not have a problem in granting this request.

Mr. White stated there is no right-of-way problem to the north or to the south. The right-of-way problem should not be a concern for this Board. The house itself relative to the houses to the north and to the south is the issue here. Mr. Van De Wiele agreed. Mr. Henke also agreed, stating the applicant could shift his house either to side or come in today to request a variance from the rear setback and built the house closer to Mrs. Franchi's property.

Mr. Van De Wiele stated with the Board not being builders or surveyors, it looks like there would be ways to fix this situation. He intends to agree with Mr. White that there is a degree of self-imposed hardship, but he does think there is a valid hardship in this case. If he had the data in front of him today showing that the house to the north, exclusive of the porte cochere, and the house on the house that the applicant was not in front of or west of the line he could support this request but he would rather see a plan.

Ms. Snyder believes that the applicant's lot is an unusual lot for the area. After visiting the street she visually thought the proposed house would be in line with the houses in the area. Now that she has heard everything today she would have to agree only if the proposed house was in line with the houses of the neighborhood, especially the 4411 house.

All the Board members agreed that they would like to see an accurate site plan on the proposed house.

Mr. Henke asked Mr. Cross if he took issue with the Board's concerns and the site plan. Mr. Cross stated that he also took issue with the site plan and would like to see them more accurate than they are today. The City of Tulsa has done a monumental job in fast tracking the ordinance issue so that this request can expediently moved along as possible. Part of the problem the surveyor has had is that he has been waiting on City Engineering to give him a plot of where the right-of-way actually will be. As late yesterday afternoon Mr. Cross received the desired information from City Traffic Engineering and personally delivered it to the surveyor.

Mr. Van De Wiele asked Mr. Cross how much effort would there be for the surveyor to incorporate the information received yesterday with the City's action, and to show the front lines of the homes on the north side and on the south side in relation to the proposed house and setback on the subject property. Mr. Cross stated the plan that he has requested from the surveyor will now include the property to the north. He can request the surveyor to include the property to the south of the subject property. The surveyor has committed to have northern property information by the end of this week, and hopefully it would not take much longer to add the information for the southern property. Mr. Van De Wiele stated that he would like to continue this case to the next Board of Adjustment meeting to have the pertinent information available, with the caveat that the Board will not sit through another hour and half of discussion but only discussion related to the document requested.

Mr. White stated the new information will need to go back to the west line where it is a fixed line and include three or four properties to the south and three or four properties to the north where the street widens back out to the normal 26 foot surface. Mr. Cross stated the drawing he has requested will be pulled from the west line of the right-of-way to the proposed building line.

Mr. Swiney interjected that a surveyor would be helpful to the Board for the final decision in this case.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 4-0-1 (Henke, Snyder, Van De Wiele, White "aye"; no "nays"; Tidwell "abstaining"; none absent) to **CONTINUE** the request for a **Variance** of the front yard setback from 60 feet to 47.5 feet in the RS-1 district for construction of a new single-family residence (Section 403.A, Table 3) to the meeting of July 23, 2013; for the following property:

**W121 S125 LT 16 LESS W20 THEREOF FOR ST, BARROW'S ORCHARD ACRES,
REESEWOOD ADDN RESUB TR 10 & W/2 TR 15 BARROWS ORCHARD ACRES,
CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

21575—Bill LaFortune

Action Requested:

Special Exception to allow New and Used Auto Sales (Use Unit 17) in the CS District (Section 701, Table 1); Variance of the requirement that no merchandise may be displayed outside within 300 feet of an R district (Section 1217.C.2). **LOCATION:** 4714 South Peoria Avenue East (CD 9)

Mr. Tidwell re-entered the meeting at 2:40 P.M.

Presentation:

Bill LaFortune, 2021 South Lewis Avenue, Suite #335, Tulsa, OK; requested the Board to allow Mr. Beattie to speak out of order. Mr. Henke allowed the request.

Interested Parties:

Herb Beattie, 3474 South Zunis Avenue, Tulsa, OK; stated he is the representative for the Brookside Neighborhood Association. He thanked the Board for deferring this conversation until today allowing time for the Association to meet with Mr. LaFortune. The Association met and reviewed the plans in detail, and unanimously approved the plan. The members of the Brookside Neighborhood Association urge the Board to approve this request.

Mr. LaFortune came forward and proceeded with his presentation to the Board. The subject property is located on the west side of South Peoria Avenue and is a small lot sandwiched between a Taco Bell and an automotive repair shop. The current zoning is CS. A R District abuts the subject property on the west, a CH district abuts the subject property on the south and a CS District abuts the subject property on the north. The current condition of the property is vacant, and has been for at least five years, with a dilapidated office or shop type building that is in complete disrepair. There is a large grassy area in the rear of the property that will not be used by the applicant for anything. Currently there is a small fenced-in area on the subject property that has become a homeless storage area. No auto mechanic service will be performed by the applicant. Currently there are 18 marked parking spaces in the rear and 12 marked parking spaces in the front of the building, for a total of 30 spaces. Only those 30 marked parking spaces will be utilized to park the automobiles that are for sale with no others on the lot. The applicant intends to fully restore the existing building. The existing landscaping will be removed with new shrubbery planted. The ingress and egress will be from the existing access points. The only changes to the property will be improvements to the property and building. The applicant intends to provide screening on the north and south sides of the property. The applicant will improve the existing sidewalk and then maintain that sidewalk. The neon lights and the other tubular type lights that exist on the building will be removed. The proposed use is compatible and similar to other uses in the area. The R District abutting the property to the west is not being used for residential uses. The mini storage facility, that was approved by this

Board, is approximately 128 feet long and there is the 70 feet of grassy area on the subject property making about 600 feet from the cars to the nearest residential use. With 600 feet created by the large grassy buffer and the nearest apartments to the west of the subject property there is an unusual circumstance to this property, such that, if the Board were to enforce the code regulations of not selling items outside within the 300 feet radius of the R District it would place an undue hardship on the subject property. The subject property is owned by the Taco Bell and is under a 99 year lease that stipulates there shall be no food, beverage, convenience store, gasoline or any other type competition on the property. The existing business sign will stay exactly as it exists except the name will be changed. There will no storage units on the property.

Comments and Questions:

None.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a **Special Exception** to allow New and Used Auto Sales (Use Unit 17) in the CS District (Section 701, Table 1); **Variance** of the requirement that no merchandise may be displayed outside within 300 feet of an R district (Section 1217.C.2). The Board has found that the subject property is separated from the nearest actual residential use by a 70 foot in the rear of the property which will not used for display of merchandise, as well as a storage facility also in the rear of the property making the closest actual residential use approximately 600 feet from the nearest display of vehicles on the lot. The Board has also found that the use will be compatible with other uses in the area. This approval will be subject to conceptual site plan 4.10. This approval will be subject to the further conditions that no storage of or display of materials or automobiles are to occur on the 70 foot grassy strip to the rear of the property. No commercial auto detailing other than minor cleaning of vehicles to occur on the property. No auto repair to occur on the property. No more than 30 vehicles, with 18 in the rear and 12 in the front, be displayed at any given time. The landscaping of the property to be to code, as well as screening on the north, south and west property lines be to code. The sidewalk on the front of the property will be maintained by the tenant. Finding the Special Exception will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. Finding by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

LT 2 LESS E15 THEREOF FOR ST, EVERGREEN SUB, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

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NEW BUSINESS

21582—Chuck Gawey – dba Albert G's BBQ

Action Requested:

Variance to allow one (1) wall sign to extend above the parapet wall in the CBD District (Section 1221.C.11). **LOCATION:** 409 E 1ST ST S (Tenant Space: 421 E 1st St S) (CD 4)

Presentation:

Chuck Gawey, 2748 South Harvard, Tulsa, OK; stated he would like to install the neon sign on the building to attract business and mark his business.

Mr. White asked Mr. Gawey what his hardship is. Mr. Gawey stated that to move the proposed sign to any other place than proposed it would not have the same affect or be in keeping with the historical warehouse look of the building.

Interested Parties:

Peter Janzen, Acura Neon Sign Company, 1801 North Willow Avenue, Tulsa, OK; stated Synergy originally designed the awnings for the building to compliment the historical look of the building and keep in the character of the area. The restaurant is next door to McNellie's which is in a building that is approximately 110 years old. The awnings are designed similar to an old-fashioned awning and are to protect the pedestrians on the sidewalk. Mr. Janzen stated that the awnings are required as designed to be part of the building and with that there is not enough room to bring the sign below the parapet creating a hardship. An alternative that was offered by the City of Tulsa is to brick up the parapet to the height of the sign but the applicant would really like to keep the original look of the building.

Comments and Questions:

None.

Board Action:

On **MOTION** of **SNYDER**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Variance to allow one (1) wall sign to extend above the parapet wall in the CBD District (Section 1221.C.11), subject to per plan 5.14 pertaining to the Albert G sign. The hardship is that this is an old building and the applicant wants to keep the parapet of the building so awnings, and once the awnings were installed the sign would not fit on the wall so it must be above the parapet. Finding by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in

unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

**LT 3 & E65 LT 4 BLK 76 & LT 4 BLK 77 & VAC ALLEYS & VAC FRANKFORT AVE
ADJ THERETO, TULSA-ORIGINAL TOWN, CITY OF TULSA, TULSA COUNTY,
STATE OF OKLAHOMA**

20454-A—Charles Martin

Action Requested:

Special Exception to allow automobile sales (Use Unit 17) in a CS District (Section 701, Table 1); Variance to allow open air storage and display of merchandise within 300 feet of an adjoining R district (Section 1217.C.2). **LOCATION:** 1606 North Sheridan Road East **(CD 3)**

Presentation:

Charles Martin, P. O. Box 3463, Broken Arrow, OK (18210 East 48th Place, Tulsa, OK); stated he has purchased the subject property and was informed that the existing zoning expired.

Mr. Van De Wiele asked Mr. Martin if he planned on having auto repairs. Mr. Martin stated that it would be in house only for the existing cars that were to be sold. The building has a two-bay garage with a lift and there would be supporting activity for a car lot.

Mr. Van De Wiele asked Mr. Swiney if the request could be re-instated or does the Board need a new finding for a hardship? Mr. Swiney stated that it was not so much a hardship that must be found but an extraordinary or unusual condition whereby a literal enforcement of the code would be a hardship. On page 6.4 in the Board's packet it is stated that the subject property is very shallow and the literal interpretation of the code would not permit outside display of merchandise anywhere on the property. That, perhaps, would be the extraordinary circumstance the Board needs.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a

Special Exception to allow automobile sales (Use Unit 17) in a CS District (Section 701, Table 1); Variance to allow open air storage and display of merchandise within 300 feet of an adjoining R district (Section 1217.C.2). The hardship for the variance being that the lot in question is small compared to most car lots and is shallow in depth. This will be in compliance with the other uses in the CS strip in the area. The fencing will be maintained around the property between the business and the residential area. This approval is to comply with the previous conditions except for the time limit. There will be no time limit imposed. The previous conditions to be followed are: prohibit and limit storage of vehicles or parts behind the structure; use of Kennebunkport formula for lighting; no storage of inoperable vehicles; any repair of vehicles is to be inside and for their use only, not for public use; dust free and hard parking surface; no storage behind the screening fence above the height of the fence; and the hours of operation to be 8:00 A.M. to 8:00 P.M. Finding the Special Exception will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. Finding by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

LTS 7 & 8 BLK 4, SCAGGS ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21584—Gary Craig Herman

Action Requested:

Special Exception to allow a manufactured home (Use Unit 9) in an AG district (Section 301, Table 1). **LOCATION:** 3330 South 57th West Avenue **(CD 2)**

Presentation:

The applicant was not present. The Board chose to move this case to the end of the agenda.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

No Board action required at this time.

21585—Kyle Brumble

Action Requested:

Special Exception to modify front yard fence height from 4 feet to 7 feet (Section 210.B.3). **LOCATION:** 4930 East 105th Street South **(CD 8)**

Ms. Back stated there was an exhibit submitted on July 2nd, that was included in the Board's agenda packet as a separate document, and it incorrectly depicted a height of eight feet to the top of the end cap and that measurement should be seven feet to the top of the end cap. That figure needs to be changed on the Board's 11 x 17 exhibits.

Presentation:

Kyle Brumble, Brumble and Associates, 11316 South 75th East Avenue, Bixby, OK; stated this request is for a six foot tall wrought iron fence with seven foot pillars.

Interested Parties:

Zachary Efali, 4939 East 105th Street South, Tulsa, OK; stated he lives directly to the northeast of the subject property. He objects to the height request for the fence. He does not have a problem with a fence in front of the house as long as it stays within the zoning code of four feet. There are twelve houses in the neighborhood and four of the houses have fences in front of them. Two of the houses have white picket fences, one has a split rail fence which protects a drainage pond, and the other house has a wrought iron fence. A fence any taller than four feet would be harmful the aesthetics of the neighborhood and would not contribute to the feeling of community within the neighborhood. At this point Mr. Efali presented pictures of the four houses with fences in their front yards. Mr. Efali stated that the covenants have been changed to protect the character of the neighborhood because the aesthetics of the neighborhood are important to residents and they want to keep them.

Bob Jennings, P. O. Box 670605, Dallas, Texas (4930 East 105th Street, Tulsa, OK); stated he owns the subject property. The reason he has requested the special exception is because he has small children that like to play in the front yard. The street is the main access into the neighborhood and there are speed bumps on the road due to the high volume of traffic. The request for the six foot high fence is basically for safety and security. The setback of the fence and the driveway pad allows for a full size truck to sit on the pad and not be in the roadway or the traffic pattern. It is designed so the gate can be accessed without interfering with traffic. Also, the design of the fence and gate there is no line of sight blockage for the street. There are other fences around houses in the area, not specifically on the subject street, that do have six foot tall fences with access gates. When he purchased the house the fence columns had already been installed, and the assumption was that the fence would be erected. It was not until a couple of months ago that he was informed that the fence would not be installed. The original plan was approved by the City and then a notice was sent to the builder, who had the property at the time, that the fence could not be installed. Therefore, Mr. Jennings was not aware that the fence could not be installed until much later. The

entire proposed fence would be wrought iron with clear visibility and line of sight, and his priority is the safety and security for his family.

Mr. Van De Wiele asked Mr. Jennings if he thought the fence would be out of character with the neighborhood as Mr. Efali has stated. Mr. Jennings stated that if a person would look at the neighborhood overall, there are several newly built houses with several older homes to the east of the subject property. The houses on the north side are well kept and the houses on the south side are a little less kept in appearance and dated. The fence is not meant to wall his family off from the neighborhood as the neighbor alluded to because his family has already become acquainted with a couple of the neighbors.

Mr. Henke stated that a lot of neighborhoods have certain character. A lot of neighborhoods in Tulsa have walls and fences, but this neighborhood does not. Mr. Efali's point is there are not any fences that are in excess of the four foot code requirement, and that is why the subject fence would be out character with the surrounding neighborhood. Mr. Jennings stated there are other neighborhoods very close by that have fences similar to the proposed fence. Immediately to the north of him, in a gated community, the entire neighborhood is walled off.

Mr. Van De Wiele stated that his concern is that he lives less than a half mile from Mr. Jennings and that open street is one of the few that has no curves. He has concern that the proposed is not in character with the neighborhood.

Mr. Jennings stated that a four foot fence can be jumped over by anyone, and the traffic is bothersome to him and his wife in relation to the children.

Mr. Tidwell asked Mr. Jennings if the columns were in place when he purchased the home. Mr. Jennings stated that they were. The plans for the home were submitted in June with an approval stamp on them dated June 16th, and the columns were installed shortly after that approval, then there was a letter received by a different builder which was not Mr. Jennings builder. The referenced letter was never transferred to his builder, but yet the columns were already in place.

Rebuttal:

Mr. Brumble stated that he is the builder that took over the build. The builder that was on the paperwork is no longer associated with the build from June 15, 2012 forward. This builder is the one that received the notice from the City stating that the fence was out of compliance. The former builder is the one who submitted the plans and received the permitting for the fence. The plans showing the 24 x 24 pillars with a six foot wrought iron fence that the former builder submitted were approved, and those pillars were installed the following day. Mr. Brumble stated that the Jennings purchased the home approximately June 20th, and at that point the builders were changed with everything being put on hold. Mr. Brumble stated that he received notice in either March or April of 2013 that the house was out compliance.

Mr. Van De Wiele commented that he is wondering if he is looking at this as a concerned neighbor or is he looking at this as a concerned Board member. At this point, stated that because of the doubt he would be recusing himself.

Mr. Van De Wiele recused himself at 3:40 P.M.

Comments and Questions:

Mr. Henke and Ms Snyder both stated that a six foot tall fence is not in character with this neighborhood.

Ms. Back stated that not in this neighborhood, but the neighborhood to the north of the subject neighborhood, is the neighborhood that does have the taller fences. There are houses with tall fences that are close, it is just that the fences are not in the same subdivision.

Mr. Henke stated that speaks to his point earlier. If that is the type of neighborhood a person wants to live in that's the neighborhood the home should be purchased in.

Board Action:

On **MOTION** of **WHITE**, the Board voted to **APPROVE** the request for a **Special Exception** to modify front yard fence height from 4 feet to 7 feet (Section 210.B.3),), per conceptual plan 8.9. Finding the Special Exception will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; for the following property:

LT 4 LESS E130 THEREOF BLK 3, COUNTRY GENTLEMEN ESTATES, SOUTHERN OAKS ESTATES, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

This motion Failed for a lack of a second.

On **MOTION** of **TIDWELL**, the Board voted 3-1-1 (Henke, Snyder, Tidwell "aye"; White "nay"; Van De Wiele "abstaining"; none absent) to **DENY** the request for a **Special Exception** to modify front yard fence height from 4 feet to 7 feet (Section 210.B.3), because the proposed fence is out of character with the neighborhood; for the following property:

LT 4 LESS E130 THEREOF BLK 3, COUNTRY GENTLEMEN ESTATES, SOUTHERN OAKS ESTATES, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

Mr. Van De Wiele re-entered the meeting at 3:46 P.M.

21586—Ramella Bossler

Action Requested:

Special Exception to permit carport in the required front yard in an RS-2 district (Section 210.B.10.g); Variance from extending 20 feet into the required front yard to 21 feet from the rear of the required front yard (Section 210.B.10.c); Variance of maximum height from 10 feet to 10 feet - 8 inches at the highest horizontal point (Section 210.B.10.d); Variance from the maximum allowed carport size from 20 feet x 20 feet to 26 feet x 20 feet (Section 210.B.10.a). **LOCATION:** 535 South 90th Avenue East (CD 3)

Presentation:

Ramella Bossler, 535 South 90th East Avenue, Tulsa, OK; stated she wants to have the carport to protect her pickup truck because it will not fit into the garage.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Special Exception to permit carport in the required front yard in an RS-2 district (Section 210.B.10.g); Variance from extending 20 feet into the required front yard to 21 feet from the rear of the required front yard (Section 210.B.10.c); Variance of maximum height from 10 feet to 10 feet - 8 inches at the highest horizontal point (Section 210.B.10.d); Variance from the maximum allowed carport size from 20 feet x 20 feet to 26 feet x 20 feet (Section 210.B.10.a), subject to conceptual plan 9.13. The hardship being that the garage with the house is an older home and the size of the garage is not large enough to accommodate today's vehicles. Finding the Special Exception will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. Finding by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or

impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

LT 8 BLK 22, CLARLAND ACRES B17-19 & PRT B21-22, CLARLAND ACRES B20-37, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21587—Lou Reynolds

Action Requested:

Variance of the off-street parking requirement from 252 spaces to 188 spaces (Sections 1211.D, 1212.D, 1213.D, 1214.D & 1219.D); Variance to allow outdoor display of merchandise closer to street than building setback (Section 1214.C.1.a); Variance to allow outdoor display of merchandise within 300 feet of an abutting R District (Section 1214.C.1.d); Variance of the landscaping requirements, per plan (Section 1002). **LOCATION:** 3111 South Harvard Avenue East, 3339 South Harvard Avenue East **(CD 9)**

Presentation:

Lou Reynolds, 2727 East 21st Street, Tulsa, OK; stated the subject property is the former Homeland store that was located at 3339 South Harvard. The Homeland store has been closed for a little over a year, and the facility is a very dated facility. The shopping center runs north and south along Harvard Avenue for about 600 feet and goes back for about 600 feet making it ell shaped. The shopping center abuts residentially zoned property that has several mixed uses, including a retirement community and a church. Historically the Ranch Acres Shopping Center is a little unusual for Tulsa because it is made up of four separate tracts of property and has two sets of different owners with one master ground lease. The applicant will be sub-leasing the former Homeland space. As a part of the redeveloping of the center the landlord has tied lots 5 and 6 together making them one lot. The purpose for doing that was clarifying the signage rights. The applicant intends to raze the old Homeland store and rebuild in the same footprint which will be an improvement for the area. There is an off-street parking issue. Between lots 5 and 6 there are 188 parking spaces and the applicant would need 252 parking spaces to comply with the code, that is the reason for the variance request. Of the 188 spaces there are 116 spaces located on the leased premise for the 37,000+ square foot store. The store would require 166 spaces to comply with the code. The parking lot lease is not exclusive, it can be used by all tenants in the center. The applicant has requested the lease of the parking lot so they can rebuild and maintain the parking lot. The applicant has also extended their premises out slightly to gain access to the access lane to ensure that the applicant will repair and maintain that lane. Mr. Reynolds counted the number of cars parked in the entire center on ten separate occasions and the average amount was 42 with the highest count being 49. The applicant has requested a variance on the outdoor display of merchandise because the store is within 300 feet of the R district. All the merchandise that will be displayed outdoors, which will be the typical seasonal items, will be on the western side of the store.

Mr. Van De Wiele asked Mr. Reynolds what the pallet and organic storage area is to be that is depicted on one of the drawings in the Board's agenda packet. Mr. Reynolds stated that on the eastern edge behind a wall the store will have a screened facility where the cardboard and pallets will be stored, similar to a compound, for future disposal.

The landscaping plan will have at least ten trees within the leased premises, and there will be eleven trees on the 32nd Street side. There will also be five trees on the Jamestown side. The entire will be irrigated as required by the code. The hardship is that the applicant is going into an existing facility and attempting to fit within the existing framework with other leases that are in play. There will be sidewalks on the west side of Jamestown side, the full length of the leased premises, and there will actually be sidewalks the full length on the easterly side where currently there are none.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Variance of the off-street parking requirement from 252 spaces to 188 spaces (Sections 1211.D, 1212.D, 1213.D, 1214.D & 1219.D); Variance to allow outdoor display of merchandise closer to street than building setback (Section 1214.C.1.a); Variance to allow outdoor display of merchandise within 300 feet of an abutting R District (Section 1214.C.1.d); Variance of the landscaping requirements, per plan (Section 1002). The Board has found that this existing facility, which will be reconstructed in generally the same location as the current structure provides adequate parking as well as shared parking with the balance of the shopping center such that the total number of spaces required to be in excess of the needs of the facility to be constructed. In regards to the outdoor display of merchandise the Board has found that the merchandise to be displayed will be on the front, or west, store front of the premises, and the building will effectively screen such display from the abutting R districts to the east of the subject property. This approval is subject to conceptual plan 10.12, as well as the landscaping document provided by the applicant to the Board at today's meeting on July 9, 2013. Finding by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variances to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

LTS 5 and 6, ALBERT PIKE 2ND SUB, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21588—Branch Communications

Action Requested:

Special Exception of the tower setback of 110% (137.5 feet) to 7% (9.7 feet) adjoining an AG zoned district (Section 1204.C.3.g.1). **LOCATION:** 10863 East 41st Street South **(CD 6)**

Presentation:

Stephanie Wilson, 1516 South Boston, Suite 215, Tulsa, OK; stated this request is for the placement of a 125 foot cellphone tower to enhance cellular communications in the surrounding area. The tower will be located behind a storage facility on a very oddly shaped lot. The tower will be placed in the very tip of the northern portion of the parcel to refrain from disrupting the existing property owners business.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Special Exception of the tower setback of 110% (137.5 feet) to 7% (9.7 feet) adjoining an AG zoned district (Section 1204.C.3.g.1), subject to per plan 11.7. Finding the Special Exception will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; for the following property:

Lot Three (3), Block One (1), and RESERVE "A", RAVENWOOD, an Addition to the CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21589—Walter Tempinski

Action Requested:

Variance to reduce livability requirement from 4,000 square feet to 3,443 square feet (Section 403.A.Table 3). **LOCATION:** 1544 East 19th Street South **(CD 4)**

Ms. Snyder recused herself and left the meeting at 4:07 P.M.

Presentation:

Walter Tempinski, 3220 South Peoria Avenue, Suite 103, Tulsa, OK; stated the subject property is located in the Swan Lake District. Currently there is an existing garage that is in poor condition and it will be razed. The existing house is bi-level, the front portion is one-story and rear is two-story. The applicant would like to add a room to the side of the house and adding a two-car garage slightly farther back than the existing garage. The applicant would also like to add a carport to the west side of the house, and all of the proposed plan is shown on page 12.11 in the Board's agenda packet. The hardship is that this lot is narrow for the neighborhood and the topography is steep in the front part of the house, and the existing house is very close to the property line thus forcing the garage to be pushed to the back of the lot.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 4-0-1 (Henke, Tidwell, Van De Wiele, White "aye"; no "nays"; Snyder "abstaining"; none absent) to **APPROVE** the request for a **Variance** to reduce livability requirement from 4,000 square feet to 3,443 square feet (Section 403.A.Table 3), subject to conceptual plan 12.11. The Board has found that the topography of the property, in particular the steepness of the northern portion of the property, limits the homeowner's available area in which to build improvements that are typical and customary in today's building patterns. Finding by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

**W61 E76 N130.5 LT 8 BLK 27, PARK PLACE, CITY OF TULSA, TULSA COUNTY,
STATE OF OKLAHOMA**

Ms. Snyder re-entered the meeting at 4:13 P.M.

This case has been carried forward from earlier in the meeting.

21584—Gary Craig Herman

Action Requested:

Special Exception to allow a manufactured home (Use Unit 9) in an AG district (Section 301, Table 1). **LOCATION:** 3330 South 57th West Avenue **(CD 2)**

Presentation:

The applicant was still not present. Mr. Henke asked if the Board would like to act on this case or continue it to the next Board of Adjustment meeting.

Mr. White stated the manufactured home on the application is in place.

Ms. Back stated the applicant is planning to install a new manufactured home on the subject property, but he needs the Board's permission to do so.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Special Exception to allow a manufactured home (Use Unit 9) in an AG district (Section 301, Table 1), subject to conceptual plan on 7.10 showing the proposed location of the manufactured home. This approval is subject to the further conditions that all driving and parking surfaces are paved with a dust free all-weather surface. The manufactured home is to be skirted and tied down. This approval is subject to the time limitation of 25 years from today's date of July 9, 2013. Finding the Special Exception will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; for the following property:

LT 1 BLK 1, BERRYHILL ESTATES, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

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OTHER BUSINESS

None.

NEW BUSINESS

None.

BOARD MEMBER COMMENTS

None.

There being no further business, the meeting adjourned at 4:18 p.m.

Date approved: July 23, 2013

Frank X. Harris, Jr.
Chair