

**BOARD OF ADJUSTMENT**  
**MINUTES** of Meeting No. 1098  
Tuesday, July 23, 2013, 1:00 p.m.  
Tulsa City Council Chambers  
One Technology Center  
175 East 2<sup>nd</sup> 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 Thursday, July 18, 2013, at 9:43 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.

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

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**MINUTES**

On **MOTION** of **TIDWELL**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the **Minutes** of the July 9, 2013 Board of Adjustment meeting (No. 1097).

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## **NEW BUSINESS**

### **21596—Lou Reynolds**

#### **Action Requested:**

Variance of the building setback from 50 feet to 17 feet in the IM District (Section 903, Table 2). **LOCATION:** 817 East 4<sup>th</sup> Street South **(CD 4)**

#### **Presentation:**

No presentation was made. The applicant requested a continuance to the Board of Adjustment on August 13, 2013 due to additional relief needed.

#### **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 **CONTINUE** the request for a Variance of the building setback from 50 feet to 17 feet in the IM District (Section 903, Table 2) to the meeting of August 13, 2013; for the following property:

**LT 3-4-& 5-6,7-9 BLK 12, HODGE ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

Mr. Henke asked Ms. Back about a Post-It Note that was handed to him prior to the meeting, and it has the Board member's names listed on it. Does this list mean that each member should place a check next to their name signifying they have seen and read the Post-It Note? Ms. Back stated that is correct. The person called in to the office at 12:15 P.M. as staff was leaving the office and the opposition phone call is in reference to Case BOA-21594. Mr. Henke informed the Board members and the audience that Janet Hager had called staff and is opposed to the request in case BOA-21594.

Mr. Henke stated there is also some confusion with the BOA-21594, Shadow Mountain, surrounding notice requirements, whether the facility is actually a Use Unit 2 or a Use Unit 8. Mr. Henke asked Mark Swiney to give his legal opinion in the matter.

Mr. Swiney stated that he had reviewed the case. It is his understanding there is a letter of deficiency issued by City Code officials stating that the Use Unit is a children's home. Therefore, the facility will fall under Use Unit 2 in the City code. When the applicant went to INCOG staff he did not present the letter to them, and the applicant

stated he wanted a Special Exception to allow a community group home. A community group home is contained in Use Unit 8, and it is defined in the City code. Mr. Swiney stated that he had reviewed the materials before the Board and staff today, and it is clear to him that the facility should be classified as a Use Unit 2. Therefore, it has been advertised incorrectly and needs to be readvertised as a Use Unit 2.

Mr. Henke asked Mr. Swiney if the case can come before the Board on August 13<sup>th</sup> if it is readvertised as a Use Unit 2. Mr. Swiney gave affirmation.

Mr. Henke understands that there are many people in attendance today that have an interest in this case, and he understands that they have taken off work or out of their busy schedules and would like to be heard. Mr. Henke stated he is willing to do whatever the Board would like to do, in terms of hearing the case today or hearing the case in two weeks and making the decision then. If the Board chooses to hear the case at the next meeting the interested parties would be heard at the beginning of that meeting.

Mr. White stated that there has been a lot of information provided to the Board just before the beginning of this meeting today, and apparently there is going to be a continued inflow of information. Since the Board must hear the case for the change from the Use Unit 8 to the Use Unit 2, and the case must be advertised for that, he would suggest continuing the entire case to the 13<sup>th</sup>. This would allow for more information to come in and there will be more opportunities for the applicant and the neighborhood to discuss the issues.

Ms. Snyder stated that she is concerned because she sees something to the effect that a lot of interested parties were told the hearing of the case was going to be postponed. So even though there are a lot of people in attendance today she is concerned that there are many more people not attendance because of the potential postponement.

Ms. Back stated that the people were told that the staff would ask the Board if they would consider hearing the case today, but that the case would need to be continued regardless of what happened today.

Mr. Van De Wiele agreed with Mr. White and Ms. Snyder. He does not like the fact that the interested parties that are in attendance today will need to return, but the Board does not need to hear this case twice.

## **21594—Shadow Mountain Behavioral Health**

### **Action Requested:**

Special Exception to allow a Community Group Home (Use Unit 8) in an RS-3 District (Section 401, Table 1). **LOCATION:** 2545 South Yale Avenue East **(CD 5)**

**Presentation:**

No presentation was made.

**Interested Parties:**

There were many 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 **CONTINUE** the request for a **Special Exception** to allow a Community Group Home (Use Unit 8) in an RS-3 District (Section 401, Table 1) to the meeting of August 13, 2013; for the following property:

**BEG SWC LT 1 BLK 4 GRACEMONT 2ND TH S164.61 E455.81 N164.67 W485.81  
POB SEC 15 19 13 1.836ACS, GRACEMONT 2ND ADDN, LORTONDALE ADDN,  
CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

**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 1:15 P.M.**

**Presentation:**

**Nathan Cross**, 502 West 6th Street, Tulsa, OK; stated that the applicant is now requesting 52 feet instead of 47.5 feet stated.

Mr. Van De Wiele asked Mr. Cross if the survey of the proposed house on the subject lot was presented as if the City's plan for the relocation Atlanta Place has already taken place. Mr. Cross stated that was correct. On the south end the right-of-way is 50 feet wide and as the street moves the centerline moves in five feet, then farther down it moves in another five feet which represents the centerline of a 40 foot right-of-way. The 111 feet noted on the drawing represents the depth of the owner's property with the ten foot right-of-way considered.

Mr. Cross stated that once the survey was complete and the City's plan for the right-of-way was laid over the survey, as it was believed the house related to the right-of-way, it was realized that the 47.5 feet was too close relative to the houses on the north side. The previous discussion was that a new drawing was to depict a house that would line up with the point on the next door neighbor's garage, the point that was closest to the street. The initial plan at 47.5 feet was 4.3 feet closer to the road than the next door neighbor's, so the owner cut off 4.3 feet from the rear of the proposed house and the proposed three-car garage will be a two-car garage on the back of the property so everything will be in line with the house next door and not encroach on the 25 foot setback on the rear of the lot. Now the request is 52 feet instead of 47.5 feet thus it is less relief requested.

**Interested Parties:**

**Kendall Johnson**, 4347 South Atlanta Place, Tulsa, OK; stated he lives north of the subject property and he does not think the setback is correctly depicted on the drawing. It is the consensus of all the neighbors that signed the petition they object to the variance of the zoning. There is a house at the end of the street that had asked the Board for a three foot variance for a garage expansion and that was denied, and their property is the largest of the area. The issue before the Board is whether there is a substantial hardship in existence that has not been created by the applicant. This property was purchased for well under market value, compared to neighboring property, and that was probably because the size of house that could be built on the subject property will be smaller than what is in the neighborhood.

Mr. Henke stated that there had been a lengthy discussion in regards to the hardship at the previous meeting, and there are arguments on both sides, but he does not remember the hardship being an issue with the Board by the end of that hearing.

Ms. Johnson stated that the purpose of the zoning code is to have conformity in the neighborhoods. The street that the neighborhood is odd, it is different, it is not the normal street with curves; it is a country type road. There are gravel driveways. This request is a step to more nonconformity. The more conformity the residents can have in the neighborhood the better everything will be. It is simple for the applicant to adjust the plans to bring the proposed house into the scope of the rules.

**Paula Franchi**, 4436 South Birmingham, Tulsa, OK; stated she and the neighborhood live this situation every day. They realize that the plans that were presented are deceiving, and she thanked Mr. White for realizing that. The lot is a buildable lot. It is not a hardship. No one in the neighborhood wants this variance. A variance is not justified. The neighborhood is asking that the Board of Adjustment follow the law. Why is there a zoning code if it is not going to be enforced? This is a self-imposed hardship.

Mr. Van De Wiele asked Ms. Franchi if she did not see the uniqueness of the way the right-of-way changes and the shallowness of the lot. Ms. Franchi gave affirmation to Mr. Van De Wiele and stated the property owner knew that when he purchased the lot. She has met with Engineering and they know exactly what they are doing with the road.

Mr. Zachary has bent over backwards for Mr. Bollinger. Mr. Zachary is trying to keep the road so Mr. Bollinger can build his house. She is very impressed with the way the City is trying to help. We are all trying to help, but when we do not see the truth being presented and we have to become investigators then find the house is going to eight feet over. We should not have to be doing this. All we are asking is for the Board to enforce the law. The fact that Mr. Zachary is trying to accommodate the road is admirable but it is not required. Everyone has tried working with the builder and we have received no respect. The builder does not respect our neighborhood. Ms. Franchi stated the neighborhood is happy to see in-fill and they value the in-fill but they don't want to be a neighborhood of variances. There is no reason to provide a variance. There was a neighbor that asked for a three foot variance that was justifiable and it was denied. Mr. Hanger needed a foot and a half, and he said that he had to give an arm and a leg to receive the foot and a half. Eight feet is what was originally out on the table and now it is four feet, but that is still a lot of variance. It is not necessary because it is a buildable lot. Ms. Franchi stated that she saw diagram after diagram of houses that are within the lot size and buildable for the lot. It is not hardship but is a self-imposed hardship. The neighbors should not even be before the Board asking to follow the zoning code. Why is there a code if it is not going to be enforced? She does not understand.

Mr. Van De Wiele in regards to the self-imposed hardship, is it the fact that the lot was purchased that leads you (Ms. Franchi) to believe it is a self-imposed hardship? Ms. Franchi stated that is not the reason, she is glad the applicant purchased the lot. The fact that he bought the lot knowing what he purchased and he knew it had a 20 foot easement, and he knew that because he applied for the right-of-way. Mr. Van De Wiele stated to Ms. Franchi, the fact that the applicant bought into this situation is the reason you believe it to be a self-imposed hardship. Ms. Franchi stated the applicant caused his own hardship because he is trying to build a house that does not fit the size of the lot. Mr. Van De Wiele stated to Ms. Franchi, he understands that she is objecting to the applicant's variance request but your neighbor at the end of the block that wanted a variance for the garage, that you believe to be justified, or Mr. Hanger's foot and a half that you believe to be justified, those variances you were okay with? Ms. Franchi stated that she does not know how the variances are justified. She was not involved with those variance requests, but those were minor. A foot and a half is minor. It does not intrude, and the house that was built is within the general character of the neighborhood. It does not stand out as an eyesore in the neighborhood. Mr. Van De Wiele asked Ms. Franchi if it was the style of the proposed house that she is objecting. Ms. Franchi stated no, because she thinks it is a beautiful house and loves it. She just thinks the lot is too small for the house and for the applicant to request a variance for that particular house is not justified. If the City gives the applicant ten feet of easement, and they don't have to because it is still pending, the point is the lot is a buildable lot. There is not a hardship except for a self-imposed hardship. Every neighbor that received the notification of the variance request does not want this variance to be granted.

Mr. Van De Wiele asked Ms. Franchi if she believed the three houses north of Mr. Hanger to be too close to the street, and he asked this question using diagrams in the Board's agenda packet that were placed on the overhead screen for the room to see. Ms. Franchi stated no. She said that she does not understand all the figures but she does know that when she looks down the street there could be a safety issue. Mr. Van De Wiele asked Ms. Franchi to explain what she thinks will be safety issue and that she objecting to for the variance request. Ms. Franchi stated that if there is a neighbor alert and there is a house that is protruding toward the street a person cannot see safely as they are looking down the street. She understands infill but when there are 68 people that are opposed to any variance, and it is self-imposed, she is not sure why the Board would want to support it. She asked the Board if they had any more questions for her, because at the last meeting after she sat down and the Board went into discussion she was not allowed to come back to the podium to speak, and she did not understand why because the attorney was allowed to do so. The Board was almost ready to grant the variance request when Mr. White and Mr. Tidwell realized the maps and drawings were wrong. They have been wrong since January when Yuen Ho identified those problems. That is what this neighborhood has been dealing with. The neighbors should not have to be investigators. The hardship has been on the neighbors if anything. If there is a zoning law, and it is not enforced, why is it in place?

Mr. White stated variances, not considering them at all at this point, what would be the feeling of the neighborhood if the house were constructed but not extending farther west than the house immediately to the north of it? Ms. Franchi asked Mr. White if he meant, farther west being closer to the street. Mr. White answered affirmatively. The neighbors do not want a variance. Mr. White asked Ms. Franchi to forget the variance. For the simple fact, if the house did not extend farther west than the house to the north, which he understands to be the corner of garage. Ms. Franchi stated that she is not really sure how to address this, but the diagram does not really show the true picture of the abutting line of the garage. Mr. White asked Ms. Franchi to please answer his one question. If the proposed house does not extend any farther west than the closest house on that side of the street, as it exists now, would she have any objections. Ms. Franchi asked if it would require a variance. Mr. White asked her, again, to forget the variance and he would explain why he is asking this question when she answered. Ms. Franchi stated that from what she had heard, the neighbors do want it to go beyond the abutting garage. Not the one further north, but the abutting garage to the north, the garage that is at an angle. Ms. Franchi stated that according to Greg Hanger, according to 211.C in the Zoning Code, the builder indicated the house was to be set back further than their survey work indicated, noting that the 12'-6" variance would mean the house would indeed was as far west as the overhang as is scribed. Mr. White stated that based upon his earlier question and her response to it, he would like to point out that what seems to be the problem is that this subdivision was originally very large lots. Those lots have now been broken down into smaller lots, or re-subdivided. The whole problem in this area seems to have developed from the fact that the three houses on the old Lot 16, in 1923, did not have any right-of-way given for the street. The subdivision with the lots across the street ultimately had 30 feet given off them, and that is why there is a nice straight line along the west side of the street for those lots. So

they do not have any problem, but the code is defining everything from the center of the right-of-way. The problem is that the right-of-way line is jogging back and forth as it goes from the 50 feet total right-of-way to the north, 50 feet total right-of-way to the south, then in the subject area there is zero. The right-of-way line keeps jogging. Ms. Franchi stated that what she understands, from Paul Zachary, is that line narrows only because the City is trying to work with the builder right now. Technically, that line could go straight but what Paul is attempting to do is help the builder. The City is angling from where it is 50 feet wide, the City is narrowing it. Even the line looks like it zigzags it does not. Mr. White stated that if the right-of-way is taken it will be a jog. Ms. Franchi stated no because the City is angling it. The City is taking the required amount for the Fire Marshal which is 18 feet of road. That is the minimum. So the two houses north that do not have a right-of-way, are going to be widened two more feet. She has spoken to Paul Zachary in detail about this and she has also spoke to the owners of the property and the front of their yard is going to be two feet less because the City taking that two feet. The City is being nice and trying to accommodate the builder by not widening the street the full 50 feet.

Ms. Franchi stated she is serious about this project because this is serious business. Mr. Van De Wiele stated that if he did not believe her to be serious and the subject matter to be serious he would not be in attendance. Ms. Franchi stated the neighbors have been given false information and they have been so diligent in their investigations. Mr. Henke stated that is why the Board continued this case and they now have a licensed survey. Ms. Franchi stated that the licensed survey was there when the applicant applied for his permit and it was wrong and the permit was suspended, so what does a licensed survey mean? Mr. Henke stated the Board is only as good as the information it is provided. Ms. Franchi stated that Mr. Henke was exactly right and the neighborhood also is only as good as the information they are given. We knew the information was inaccurate and they had to perform their own investigations. Mr. Henke stated the Board used its best judgment and continued this case, and this is not a popularity contest. Just because she was able to obtain 65 signatures does not change the fact that there is a lot that is unusual. Ms. Franchi stated the lot is not unusual. It is flat, it is wide and it is buildable.

Mr. Van De Wiele asked Ms. Back to use the overhead screen and zoom in on the subject lot. At this point Mr. Van De Wiele stated the drawing on the overhead screen assumes the approval by the City Council of the change in the right-of-way, and the ten foot easement given to the City. If that approval goes through Mr. Van De Wiele used the drawing placed on the overhead screen to show what the applicant's lot will look like. Mr. Van De Wiele then went to the overhead screen and pointed out a small area on the north end of the subject property, which could represent a five foot setback, there is a portion of the house that extends outward about one or two feet and another portion of the house that extends outward, which Mr. Van De Wiele thought represented a proposed fireplace which could be eight or nine feet, those two areas are the only thing that applies to the variance request. Mr. Van De Wiele stated that the fireplace bump out does not count. Ms. Back gave affirmation to the fireplace statement. Mr. Van De Wiele stated that in his opinion the applicant's request is less intrusive than Mr.



Hanger's foot and a half for a rock façade to be installed on his house. Mr. Van De Wiele did not think any criminal was going to hide behind the foot and a half. He really thinks the neighbors think the proposed house is too much house for the neighborhood. He has read the e-mails concerning the width and depth, and if it is a safety issue all that is being discussed is someone hiding behind a one foot corner or maybe eight feet of chimney. Ms. Franchi stated that Mr. Van De Wiele's statement is not true, that the neighbors do not want it to be a neighborhood of variances, because when Mr. Cross presented his case he stated that the neighborhood does have existing variances. Mr. Van De Wiele stated there is no precedence value from one variance to the next variance. Ms. Franchi stated that when Mr. Cross made his initial presentation, one of the items he used to build his case was the fact that there are existing variances in the neighborhood so it already went from Greg Hanger's variance to other variances to today's variance request then they become justified. Mr. Van De Wiele stated that legally that is not the way it works. Mr. Van De Wiele stated to Ms. Franchi that other than a fundamental opposition to the granting of a variance, explain how the foot or so sliver right above the arrow designating 58.45 on the drawing and the seven or eight foot bump out wants you to oppose this request, and please do not answer the question in the abstract of "I don't want a variance in the neighborhood". Ms. Franchi stated that there is no hardship, it is a buildable lot, and the neighborhood wants to enforce the zoning code. There should not even be any question. Ms. Franchi asked Mr. Van De Wiele if he still thought there was a hardship. Mr. Van De Wiele's answer was absolutely because this street and neighborhood is very unique.

Mr. Van De Wiele stated that was discussed at the last meeting, at least his concept, is because of the uniqueness of this right-of-way and the uniqueness of the centerline of the street, in practical terms it is how far this house sits off the middle of the street that is at issue. If a person lived on a curved road no one is going to ask a person to build a curved front on the house. If a person lives on a cul-de-sac there is some uniqueness there. There is uniqueness to this property. It is not just how level or unlevel the property is. It is the smallest lot in the neighborhood. Ms. Franchi stated that the applicant purchased the lot knowing that. It is a self-imposed hardship. The applicant purchased the lot knowing what he was dealing with and there are plenty of houses that are buildable that can be on that lot. Mr. Van De Wiele stated to Ms. Franchi that for her to change his mind she must tell him what it is about the two rectangles designated on the drawing, specifically about those two rectangles, what it is that bothers her. Why are those two items causing that much of a concern, specific to this design and this lot? Mr. Henke stated that if the house were closer to the street than any other house in the neighborhood that would be an argument, but that is not an argument. Ms. Franchi stated that the applicant moved the house back and the concern is that it comes back east is not a solution.

**Chris Franchi**, 4436 South Birmingham, Tulsa, OK; stated that he is Paula Franchi's husband and he agrees with everything that she says. However, at the last meeting, Mr. White you asked specifically for a drawing that would show the Board that the proposed house did not protrude past the houses to the north and the south. Part of his problem is that every drawing he has seen has some kind of funky math to it and does

not make any sense. Mr. Franchi stated that Mr. Hanger is an accountant and he does not understand. That is why he made his own drawings. Mr. Franchi stated that he understands the line jogs five feet at several points, and he used the laser pointer to point out several things on the drawing that was displayed on the overhead screen. The house is 64 feet from the curb. Mr. Van De Wiele stated that it is 64 feet from the centerline of the right-of-way. Mr. Franchi stated if 10 is subtracted from 64 it should equal 54, and the other houses are 44 feet from the centerline. Where is the other 10 feet? Where did it go? He has not believed any diagram he has seen in the past 13 months so why would he believe this one today? Mr. Van De Wiele stated that the difference is that you are speaking of the 44'-6" and the 64'-6", and what he did was take out his ruler and drew straight east and west lines. The house Mr. Franchi is discussing sits further in front of the 64 feet though it does not look like it and that is probably where the 10 feet is located.

Ms. Franchi stated that she has a diagram that was given to her by Paul Zachary, and it has the houses lined up and can be seen better than the diagram on the screen. That drawing shows the points where the road is going to be widened and angled and the drawing by the surveyor does not show that because he has it blocked off in dimensions of feet. Mr. Van De Wiele stated the road has to sit within the right-of-way. The right-of-way, if the City grants the request for the vacation of the easement, the right-of-way will be rectangle, a narrow rectangle, rectangle, and an even narrower rectangle then the City will come in and build a smooth curve in that same right-of-way. Ms. Franchi stated that what she is concerned about is the visual and that is what the neighbors are also concerned about. So the house will look like it is really close to the road once the road is widened because the City will bring back the road more than what is perceived in the diagram.

Mr. White stated that the physical wearing surface will be angled. The right-of-way line will not be angled. This Board must deal with the right-of-way line and the dedicated roadway. The Board could care less as to where the physical roadway or wearing surface is located. Ms. Franchi stated that would look weird. Mr. White stated that is not the Board's concern. Ms. Franchi stated that is the neighbors concern. Mr. White stated that is not an issue before the Board today. Ms. Franchi stated that what is at issue is the neighbors do not want to allow a variance for something that is not necessary because it is not a hardship and it is a buildable lot. A house could be conformed and built on the lot the applicant purchased. Mr. White stated that in answer to Mr. Franchi's statement about the funky math. That funky math is generated by the fact that the right-of-way line is jogging. Taking five foot jogs and what it is doing is altering the described centerline of the right-of-way to which the zoning code directly refers. That is what the Board is attempting to make their determination on. Mr. Franchi asked if that is what is reflected on Mr. Cross's new drawing. Mr. White answered affirmatively.

Mr. Franchi had Ms. Back display a drawing on the overhead screen and discussed the house directly across the street from the subject property, and asked the Board if they could see a 10 foot difference between the two houses and the centerline as depicted

on the drawing. Mr. Van De Wiele stated that by the figures there would be a 12 foot difference. Mr. Franchi asked the Board if they were okay with that. Mr. Franchi stated that he thought the Board had enough facts and thanked the Board for their time with him.

Ms. Franchi stated that she still wanted to know if she would be allowed to come back to the podium when the Board went into discussion. Mr. Henke told her no. Ms. Franchi asked Mr. Henke if he still thought there was a hardship. Mr. Henke stated that he does. Mr. Van De Wiele stated that the determination of a hardship is not the end of the equation it is whether that hardship makes the application of the code justifies the relief the applicant is requesting. Mr. Henke stated that it is also whether or not if the request relief is detrimental to the neighborhood. Ms. Franchi stated that it could be detrimental to the neighborhood. Mr. Henke stated that he understands that is what she is arguing, and the Board will contemplate that when they make their decision.

Ms. Franchi stated that she wanted to explain why she was bringing up the length, height and width of the house. When she was discussing this with the neighbors, their neighborhood houses vary in price from about \$250,000 to \$1.5 million. The neighbor that is in the million dollar house, depending on the height of the proposed house. Mr. Henke stopped Ms. Franchi and stated the code restricts the height of the house and the applicant is not requesting any relief for the height. Ms. Franchi asked if there is a reason why the she or the neighbors could not find out the actual dimensions of the house that is to be built on the property. Why is that a secret? Mr. Henke stated the house must comply with the code and if it doesn't the applicant will receive a citation from code enforcement. Mr. White stated the Permit Office will see the plans and if the house is in excess of 35 feet permitting will send the applicant to the Board of Adjustment to request for relief. Mr. Henke stated that if the applicant states the house will be 34 feet and builds it to be 36 feet. Ms. Franchi interrupted and stated then it becomes a hardship because it is a whoops. Mr. Van De Wiele stated that is what would be a self-imposed hardship. Ms. Franchi stated this whole thing is self-imposed. When a person purchases a lot that they know is unique, even though it is a buildable lot the applicant knew it was a buildable lot. Ms. Franchi stated she knows the Board is tired of hearing that. Why is there a zoning code if it is not enforced? Mr. Van De Wiele stated that is what the Board of Adjustment does. The Board is an enforcer and part of that enforcement is to grant exceptions and variances to that code where they need an adjustment. Mr. Henke stated that the code provides for the Board of Adjustment, if there is to be strict enforcement of the code the members of the Board would not need to be here. Ms. Franchi stated this is pretty cut and dry as far as the lot is a buildable lot and it is a self-imposed hardship based on the house that the applicant desires to put on the lot he purchased. He is asking for a variance for a house that doesn't meet the size of the lot. Why provide a variance when there are other houses that can be built on the lot without a variance. Mr. Van De Wiele stated that statement is true. A house can be built on that lot but that is not the end. Ms. Franchi stated that is not that she does not like this house but the point is that there will be a precedent for saying that we won't but we will. Then someone will come back before the Board, such as an attorney, saying there are multiple variances in the neighborhood. At the last meeting Mr. White brought

up the fact that if the house was at the abutting garage that is when the Board would make a decision. This house is beyond the garage. That is what was discussed at the last hearing. The house is well beyond that point; it is not in line with it. Mr. Van De Wiele stated that Ms. Franchi is correct. The house was to be in line with the nearest corner and the house is beyond the nearest corner. That is contrary to what the Board was told at the last meeting. That is why the Board asked for the new drawing. Ms. Franchi asked what does that mean. Mr. Henke stated it is a difference of the 52 feet the applicant is requesting and the 56.9 feet.

Ms. Franchi stated she is really concerned because the neighbors are concerned. A lot of them are concerned. The neighborhood has a special community and she is supporting the neighborhood even it means putting the proposed house closer to her property if it meant the neighborhood would not have the variance. The solution is to push the house closer to her property, because she and her husband have to support the community. The neighbors do not want any house that is going to require a variance and that will be an intrusion or detriment or devalue any of their houses. That is what is going to happen with this house. It is going to be detriment and will depreciate the homes values.

Mr. Van De Wiele asked Ms. Franchi if she really believed the statement she just made about house values. Ms. Franchi answered affirmatively. The applicant brought in fill after his permit had been suspended and now his land is level. There is also a drainage concern, and it is not just about my property. There are neighbors here that had a drainage problem and she paid \$30,000 to have it rectified. When drainage plans are not considered up front it becomes a problem. The neighborhood has been reassured that the problem will be taken care of and that there is a drainage plan. It does devalue the property when another house can see into a house because one of the houses is elevated. Mr. Henke stated that he hopes that we can agree to disagree. Ms. Franchi asked Mr. Henke why he thought the proposed home is going to increase the existing property values. Mr. Henke stated that out of respect for the other ten cases on the agenda today he will decline a statement. Ms. Franchi stated that she has done her best for the neighbors.

**Cindy McClure**, 4461 South Birmingham Avenue, Tulsa, OK; stated that in the last ten years four new houses have been built just a few lots away from the proposed house. She has owned her house for 60 years and she is the original owner, and she lives about four houses west of Ms. Franchi. She never had a drainage problem until the four new houses were built. She had to have commercial guttering installed on her house and French drains installed. She does not want to repeat anything Ms. Franchi said but she agrees with her. She does want to know why the applicant cannot shorten his fireplace. She wants to know why the City doesn't build the street first. She stated she does not walk down the subject street because it is dangerous to do so. She thinks more investigation needs to be done and the street should be built before the house. Once the street is complete, then look at the house plans. The City is attempting to conform the street to the applicant's house. As for safety, she has had the police come out to her house because she has had her patio furniture stolen. She has had people

sleeping on her front porch. She just received an e-mail about a woman that was in her garage with the garage door open and a person walked into the garage and stole her bicycle. There are safety issues. She looks after her neighbors. Mr. Van De Wiele asked Ms. McClure if she thought the proposed house would increase or decrease the safety factor in the neighborhood. Ms. McClure stated there would be fewer hiding places. Mr. Henke stated the Board of Adjustment cannot deal with drainage issues and he wishes he could be more helpful.

**Rebuttal:**

**Nathan Cross** came forward and stated that his understanding is that at the last, and he thinks this was asked of Ms. Franchi, if she would have an issue with the proposed house if it did not protrude beyond the Wilson home. Mr. Wilson even stated the corner that was being discussed was his garage. There is a porte cochere on the house but it is not depicted in the diagrams. As for the measurements on the drawing, which are similar to the past discussions, Ms. Franchi and Mr. Hanger question anything that is presented to them. There has been a surveyor draw up the site plan. He cannot personally testify that the numbers are accurate but a licensed surveyor did the drawing so he has no reason to question the accuracy of the numbers. As for the issue of danger, he does not see how any dwelling built in the neighborhood is any more dangerous than a vacant lot full of trees in the terms of hiding places for the boogey man. He does not understand how that can be a valid excuse.

Mr. White asked Mr. Cross about his reference relevant to the setback and the corner of the neighbor's garage, is he intimating that the applicant is willing to move further east than that? The house could potentially be moved back but all of this has been done attempting to accommodate the back because of the small space between the proposed house and the Franchis. He understands that any house built on the subject lot is going to interfere with the view out of the back of the Franchi house, because at one time there was a miniature forest on an empty lot. The view will change regardless. In order minimize that the applicant has done everything he can to not move the house any closer to the property behind him. For purposes of trying to fit the house into the center of the lot the applicant has elected to seek relief on the front end rather than the back end.

Mr. Van De Wiele asked Mr. Cross how he responds to the neighbor's argument that this situation is self-imposed based on his client's purchase of the lot that he knew the dimensions of and restricted buildable space. Mr. Cross stated that, even when the surveyor pulled the measurements, it probably rivals as small a footprint as any of the houses in the neighborhood. Mr. Van De Wiele asked if that was self-imposed because his client knew that when he bought the lot? Mr. Cross stated that he did not know if his client knew that per se, but he understands what is being said. It is being said that it is a small lot so potentially it would be a smaller house. All he can say that he does not think it is unreasonable and does not think that it is self-imposed considering the size of the house in relation to the size of the lot and its relation to the street and the relation to the other houses on the street, it is perfectly reasonable to believe that a house can be

built of this size on this lot. Mr. Van De Wiele asked Mr. Cross what the square footage of the house is. Mr. Cross stated it is 2,400 square feet.

Mr. Henke stated the lot is out of character with the other lots in the neighborhood.

Ms. Snyder stated that since this is such a small area that is outside of the building line, is there any way the fireplace can be turned or put on another side of the house. Have all the ideas been looked at? Mr. Cross stated the applicant has looked at several ideas for different ways to build on the subject lot. He has not seen all of the renderings but the main thing that has been to accommodate the west edge of the house has been cut off four feet and the garage has been made into a two-car garage in order to push the house farther back from the street. The applicant has looked at other options but Mr. Cross does not know if the applicant has plans for any other options at this point.

**Comments and Questions:**

Mr. Henke stated that often when cases like this one come before the Board it is discussed how something will affect the line of sight down the street, if it is going to look out of place or be detrimental.

Mr. Van De Wiele stated that this house will sit closer to the street, if it is approved today, because the physical driving of the street is drifting or the curve is sweeping away. What he gets back to is roughly one foot or a six or seven foot bump out on this house and it does not rise to the level of not granting this request. Because of the lot's lines and the shallowness of the lot he asks if this is a unique situation and he thinks it is. He does not believe that Mr. Cross nor his client have created this situation, but have brought the road issues to the forefront. It is not whether it is detrimental but whether is substantially detrimental to a neighborhood. Again this is all subject to the City granting the relief on the right-of-way.

Mr. White stated this case is unique because of the right-of-way makes several jogs. This is something that, if the 50 foot right-of-way would have been established all the way through in the past the Board would not be hearing this case.

Ms. Snyder feels that since there is such a small amount over she feels the applicant's builder should be able to design a house that fits within the building line. Because of the street and the way it is set up it is very unusual, and in reality so many of the other houses are actually closer to the street.

Mr. Henke thinks the request meets the qualifications to grant a variance.

**Board Action:**

On **MOTION** of **VAN DE WIELE**, the Board voted 2-2-1 (Henke, Van De Wiele "aye"; Snyder, White "nay"; Tidwell "abstaining"; none absent) to **APPROVE** the request for a **Variance** of the front yard setback from 60 feet to 52 feet in the RS-1 district for construction of a new single-family residence (Section 403.A, Table 3), subject to the approval of the right-of-way relief presently before the City of Tulsa and City Council.

This is subject to the site survey submitted by the applicant on Thursday, July 18, 2013. Finding by reason of the uniqueness of the right-of-way, changes in the right-of-way along South Atlanta Place moving from south to north in front of the property, and the unique depth of the property there are 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:

**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**

**Motion failed.**

On **MOTION** of **SNYDER**, the Board voted 2-2-1 (Snyder, White "aye"; Henke, Van De Wiele "nay"; Tidwell "abstaining"; none absent) to **DENY** the request for a Variance of the front yard setback from 60 feet to 52 feet in the RS-1 district, or 47.5 feet as advertised, for construction of a new single-family residence (Section 403.A, Table 3); 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**

**Motion failed.**

**Mr. Tidwell re-entered the meeting at 2:41 P.M.  
Mr. Henke left the meeting at 2:41 P.M.**

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## **NEW BUSINESS**

### **21590—Kay Campbell**

#### **Action Requested:**

Special Exception to modify front yard fence height from 4 feet to 5 feet in the required front yard (Section 210.B.3). **LOCATION:** 1204 North Tacoma Place (CD 1)

#### **Presentation:**

**Ida Kay Campbell**, 1204 North Tacoma Place, Tulsa, OK; stated she purchased the house about six months ago. She worked on the house for about 90 days prior to moving into it, and during that time several items were stolen. After she moved into the house she had a peeping tom. That was she had a five foot chain link fence installed. The fence can be seen through with no obstruction. She has five grandchildren; the youngest is three and the oldest is nine. The three year old cannot hear and she keeps them on the weekends. She had the fence installed for her and her family's safety. She offered the Board a petition with approximately 100 signatures from the neighborhood showing approval for the fence.

Mr. Van De Wiele stated the Board does not deny request due to restricted covenants in neighborhoods, but he asked if she had any restricted covenants in the neighborhood. Ms. Campbell stated that she was told there is a neighborhood association but she was not introduced to anyone or given any information or by-laws. While going through the neighborhood asking neighbors for their opinion on the fence she met a lady who said she was the neighborhood association President, and this lady told her the realtor should have provided her with all neighborhood association information. Ms. Campbell stated she went back to the realtor and the neighborhood association no longer exists.

#### **Interested Parties:**

There were no interested parties present.

#### **Comments and Questions:**

None.

#### **Board Action:**

On **MOTION** of **SNYDER**, the Board voted 4-0-1 (Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; Henke "abstaining"; none absent) to **APPROVE** the request for a Special Exception to modify front yard fence height from 4 feet to 5 feet in the required front yard (Section 210.B.3). 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 5, BLOCK 9, COUNTRY CLUB HEIGHTS, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**



**Mr. Henke re-entered the meeting at 2:48 P.M.**

**21591—Daniel Miranda**

**Action Requested:**

Special Exception to allow for auto repair shop (Use Unit 17) in a CS district (Section 701). **LOCATION:** 11426 East 21<sup>st</sup> Street South, Tenant Space: 11682 East 21<sup>st</sup> Street South, Unit B (CD 6)

**Presentation:**

**Arturo Saldivar**, 10860 East 33<sup>rd</sup> Court, Tulsa, OK., interpreter for Mr. Daniel Miranda; stated Mr. Miranda moved into the unit in March and was not aware that he needed a special exception to have an auto repair shop because he was aware there had been a previous exception granted. He is now before the Board taking the steps necessary to receive a special exception for his auto repair shop.

Mr. Henke asked Ms. Back if this request is for an extension to a previous special exception. Ms. Back stated the previous special exception had expired as stated in the case report, and he is now under violation.

**Interested Parties:**

**Lewis Dillon**, 2142 South 117<sup>th</sup> East Avenue, Tulsa, OK; stated the subject area is unique. The area has transients and drug traffic that the area residents are leary of. The area also has low-income apartments designed for families, and the subject center is the only place children have to safely cross the street. He supports the proposed business and he thinks the neighbors would be happy if the same restrictions that were previously placed on the previous special exception could be maintained.

**Rebuttal:**

Mr. Saldivar came forward. Mr. White asked Mr. Saldivar if Mr. Miranda could abide by the conditions placed on the previous special exception, and Mr. White read the previous conditions. Mr. Saldivar consulted with Mr. Miranda, and stated that Mr. Miranda could abide by the conditions that were read.

**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 for auto repair shop (Use Unit 17) in a CS district (Section 701). The legal description covers the entire shopping center and he is going to limit this motion to the physical building located 11682 East 21<sup>st</sup> Street, Unit B. This approval is subject to a period of five years from today's date of July 23, 2013. This

approval will be limited to automobile repair only; no outside storage of materials, batteries, parts or pieces; no repair work to be performed outside of the six service bays; no more than six customer vehicles awaiting for repair in the parking lot in front of the business; the applicant is to keep the lot clean of trash and shopping carts; and no illegal disposal of solvents. 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, BURRIS SQUARE, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

**21592—Rodney Pendergrass**

**Action Requested:**

Special Exception to allow a carport in the required front yard setback (Section 210.B.10.g); Variance from the maximum allowed carport size from 20 feet x 20 feet to 30 feet x 24 feet (Section 210.B.10.a); Variance of maximum height from 8 feet to 9 feet at its perimeter (Section 210.B.10.d); Variance from extending 20 feet into the required front yard to 30 feet from the existing principal building (Section 210.B.10.c); Variance from the requirements that all sides of a carport shall be open and unobstructed (Section 210.B.10.e). **LOCATION:** 547 South Maplewood Avenue East (CD 5)

**Presentation:**

**Rodney Pendergrass**, 547 South Maplewood Avenue, Tulsa, OK; stated the President of the homeowner's association has sent him a letter stating there are no by-laws restricting carports, and he has e-mailed a copy of the letter to Carolyn Back. He has planted crepe myrtles on each side of the carport, four plants per side, to help camouflage the carport.

Mr. White stated that he does not recall ever having a carport case come before the Board that has enclosed sides, and he has been on the Board for 16-1/2 years. He is having great difficulty with this case. His first thought when he saw the carport was that it looked like a covered bridge with a garage on one end. The carport is big. Mr. White asked Mr. Pendergrass if he had considered installing a driveway in the rear, since he is located on a corner, and having the carport in the back yard. Mr. Pendergrass stated that his garage is located on the front of his house so he naturally had the carport installed on the front.

After completing construction of the carport Mr. Pendergrass stated that even he thought the carport looked like a big billboard, that is why planted the crepe myrtles to cover the sides and expects that in three years the walls of the carport will not even be seen because of the growth of the crepe myrtles.

Mr. Van De Wiele asked Mr. Pendergrass if the carport was attached to the house. Mr. Pendergrass stated that the carport is actually about an inch away from the roof of the carport and the bottom of the guttering on the house. Mr. Van De Wiele asked Mr. Pendergrass how long the carport had been installed. Mr. Pendergrass stated the carport was completed around May 1<sup>st</sup>.

Ms. Snyder asked Mr. Pendergrass if the sides of the carport could be removed. Mr. Pendergrass stated that they probably could be removed.

Mr. Van De Wiele asked Mr. Pendergrass if there was a garage attached to the house. Mr. Pendergrass stated there is a garage built in to the house but it is not large enough for two vehicles and that is why he built the carport. The purpose of the sides on the carport is to keep the snow and hail from damaging the vehicles parked under the carport. The bottom of the walls were specifically left open to allow the breeze to flow into the carport.

**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 carport in the required front yard setback (Section 210.B.10.g); Variance from the maximum allowed carport size from 20 feet x 20 feet to 30 feet x 24 feet (Section 210.B.10.a); Variance of maximum height from 8 feet to 9 feet at its perimeter (Section 210.B.10.d); Variance from extending 20 feet into the required front yard to 30 feet from the existing principal building (Section 210.B.10.c); Variance from the requirements that all sides of a carport shall be open and unobstructed (Section 210.B.10.e). For the Special Exception there will be a time limit of three years from today's date of July 23, 2013 placed on it, at which time the applicant can apply for an extension. 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. In connection with the variances the Board has found that the home, which was constructed prior to the code, the garage is insufficient size for today's larger automobiles. In connection to the final variance it will be subject to the further condition that the applicant will maintain screening in the form of crepe myrtles or similar foliage such that the growth after a sufficient growing time will provide effective screening from the sides of the carport and subject to as built as of July 23, 2013, or as exists today. The Board has found 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 1, GLENHAVEN, GLENHAVEN AMD RESUB B23-26, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

**21593—Kaitlin Snider**

**Action Requested:**

Variance of the permitted display surface area of a sign in an AG District from 190.6 square feet to 220 square feet; Variance to allow more than one sign in an AG District (Section 302.B.2.b); Variance to allow an Electronic Message Board in an AG District (Section 302.B.2.a). **LOCATION:** 5635 North Martin Luther King Boulevard East (CD 1)

**Presentation:**

**Kaitlin Snider**, 5051 South 129<sup>th</sup> East Avenue, Tulsa, OK; stated the Tulsa Health Department's North Regional Health and Wellness Center has the capacity to see approximately 351 patients per week, and they are currently at 40% capacity. In addition the outreach administrative staff has given numerous presentations during the last few months, and at each of those presentations a significant number of the audience participants stated they do not know that the north center exists. They also do not what services are being offered by the center. It is imperative to the center's mission to communicate to the citizens of Tulsa County the services available at the North Regional Health and Wellness Center. The display area allegation in the AG zoning would not allow the center to display the critical information to the public.

Mr. Henke asked Ms. Snider if she was stating that her hardship was public safety and health emergencies. Ms. Snider nodded affirmatively.

**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 Variance of the permitted display surface area of a sign in an AG District from 190.6 square feet to 220 square feet; Variance to allow more than one sign in an AG District (Section 302.B.2.b); Variance to allow an Electronic Message Board in an AG District (Section 302.B.2.a). Finding that the hardship in this case is a health center and it is difficult for people to find if they are not familiar with the area of Tulsa, and the center

needs to have more visibility via the signs. This approval is subject to per plan on 6.13 for the sign location. The approval is to conform to the zoning code outlined in Section 1221.C.2. The EMC portion of the sign will be allowed to operate 24 hours a day; scrolling is to be right to left only; there is to be no blinking, twinkling, flashing, rolling or animation. 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:

**ALL BLK 20 LESS BEG SECR TH W395.90 N250 E319.05 SE260.90 POB BLK 20, SUBURBAN HILLS ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

**21595—Mike Alexander**

**Action Requested:**

Variance of the minimum required lot width in the RS-3 district from 60 feet to 52.5 feet to permit a lot split (Section 403.A, Table 3). **LOCATION:** 1424 East 37<sup>th</sup> Place South (CD 9)

**Presentation:**

**Mike Alexander**, 2202 East 49<sup>th</sup> Street, Tulsa, OK; no presentation was made but the applicant was available for any questions.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **WHITE**, the Board voted to **APPROVE** the request for a Variance of the minimum required lot width in the RS-3 district from 60 feet to 52.5 feet to permit a lot split (Section 403.A, Table 3). Finding that this lot at 140 feet in depth will still have more than enough lot area in the RS-3 zoning to meet code. This area is part of the Brookside infill task force study and it has been found that a reduction of lot sizes available to be built is the coming trend, and the study is encouraging more of that. Also, within this neighborhood there are numerous houses on each side of the street at the 52.5 foot width. This approval will be per conceptual plan on page 8.10. 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 BLK 4, LEOKI PLACE, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

**21597—Adam Kenes**

**Action Requested:**

Variance of the building setback from an R District from 10 feet to 8 feet in a CS District (Section 703, Table 3). **LOCATION:** 2627 East Pine Street North (CD 3)

**Presentation:**

**Adam Kenes**, 16732 East 80<sup>th</sup> Street, Tulsa, OK; no presentation was made but the applicant was available for any questions.

**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 Variance of the building setback from an R District from 10 feet to 8 feet in a CS District (Section 703, Table 3), subject to conceptual plan on page 10.12. Finding that the RS-3 property to the north does not have any dwellings on it and the property is separated from the RS property by a fence and trees so there will be no sight issue with that district. This will also allow for most of the tires, that are on the outside to be placed inside of the barn thus reducing the outside storage problem. 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 10 BLK 1 LESS 8 1/2 TO CITY, JOHN MOORE SUB, WAVERLY PLACE ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

## **21598—Grant Barron**

### **Action Requested:**

Variance of the minimum required lot width in an RS-3 District from 60 feet to 50 feet to permit a Lot-Split (Section 403.A, Table 3). **LOCATION:** 2639 and 2635 East 13<sup>th</sup> Place South **(CD 4)**

### **Presentation:**

**Grant Barron**, 3922 South Madison Place, Tulsa, OK; stated the client has vacated her plans for this property and has decided to go elsewhere.

### **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 minimum required lot width in an RS-3 District from 60 feet to 50 feet to permit a Lot-Split (Section 403.A, Table 3). The Board has found that the property in question was recently the subject of a lot combination and the purpose for which has gone away. The resulting lot split will create two lots in size and shape compatible with the bounds of the neighborhood. 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-20-BLK-1, LT-21-BLK-1, HURST'S RESUB B5 FAIR ACRES ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

## **21601—Doug and Laura Wolfe**

### **Action Requested:**

Appeal of an Administrative Official determining that there is a home occupation at this residence (Section 1605). **LOCATION:** 540 South Darlington Avenue East **(CD 5)**

**Mr. White recused himself and left the meeting at 3:32 P.M.**

Ms. Back stated the Board received letters of support in the documents they were provided today.

**Presentation:**

**Doug Wolfe**, 540 South Darlington Avenue, Tulsa, OK; no presentation was made by the applicant but he was available for questions from the Board.

Mr. Van De Wiele asked Mr. Wolfe if he was on call for his job. Mr. Wolfe stated that he is on call 24/7 for his job. His tow truck is 30 feet long but it does fit in his driveway. His calls are primarily from the Highway Patrol, the City of Tulsa, Tulsa County for wrecks, and when a call comes in he has a 20 to 30 minute ETA to arrive at the scene. Since the main office is located in Sapulpa and it takes at least 25 minutes to drive to Sapulpa he would not be able to meet his target arrival time at an accident scene. Mr. Van De Wiele asked Mr. Wolfe if he owned the business. Mr. Wolfe stated that he did not.

Mr. Van De Wiele asked staff what the Board was to determine in this case, because you can see company vehicles in personal driveways all over Tulsa all the time. Mr. Swiney stated that the distinction is what kind of vehicle is customary in a residential area.

Ms. Back stated that staff contacted the Working In Neighborhoods (WIN) inspector to discuss this case. WIN used the code from Section 400 which is for residential zoning. In that section it refers to "home occupation" and staff determined in speaking with the applicant that it did not appear to be a home occupation taking place. Staff requested the owner of the company to make contact with staff to confirm the situation. That was confirmed. In speaking with WIN Ms. Back asked them to reference another code, or something else to work from because the code they quoted is basing the complaint on the fact that there is a home occupation on site and the subject vehicle is associated with the home occupation. The code reference that Mr. Swiney is referencing is based in that section of the code that addresses vehicles normally found in a residential neighborhood, and that is the only place in the code where it is listed.

Mr. Van De Wiele asked if the Board had to first determine whether this is a home occupation, and if it is does the vehicle that parks there have to be off the street on the lot, or does it have to be the other way around?

Ms. Back stated that what is before the Board is the determination as to if this is a home occupation or not. If it is not then that is what is before the Board. Mr. Van De Wiele asked if the Board is determining this case based on whether or not a tow truck is typical to be housed in a neighborhood?



Mr. Wolfe stated that there are three other tow truck services in his area. They are actually two blocks away from his house and to his knowledge no one has complained about them. Mr. Wolfe stated he has lived in his neighborhood for 14 years.

Ms. Back informed Mr. Van De Wiele that what is before him is determining whether there is a home occupation in the house, not whether the truck may be parked at the subject property.

**Interested Parties:**

**Philip Thompson**, 546 South Darlington, Tulsa, OK; stated the biggest complaint about the vehicle is that the driveway is just barely big enough to house the truck. This forces the other occupants to park in the grass. Initially there was a car parked behind the garage that was unlicensed. Mr. Thompson stated that had it not been for the wrecker Mr. Wolfe would have had room to park that car in the driveway.

Mr. Henke stated that Mr. Thompson called code enforcement and they came out and cited the applicant for the home occupation, and now there are questions about whether or not there is in fact a home occupation being conducted out of the house. Mr. Thompson answered affirmatively. Mr. Henke asked Mr. Thompson if he had any other information that he can offer the Board that would indicate or does have a home occupation. Mr. Thompson stated that he supposed the truck is parked in the driveway when Mr. Wolfe is not on a call. If Mr. Wolfe is taking calls out of house then he is operating out of his house, which is not necessarily a big deal but when he is there that gigantic thing is sitting in the driveway. Subsequently there is probably at least one full time pick up truck that is parked in the garage, and there is another truck that parks between the houses on the grass when one of the vehicles is in the driveway. He has even seen the wrecker between the house and the garage. Mr. Henke stated that cannot be done. Mr. Thompson stated there is an ordinance as to how many square feet are allowed.

Mr. Van De Wiele stated that on page 12.3 in the staff comments that says "staff communicated with WIN inspection department however they stand behind the code citation". Ms. Back stated that is correct. Ms. Back stated that she spoke with the WIN inspections department and discussed the home occupation citation and about home occupations. She explained that the home occupation section is where it is stated vehicles that are normally found in the residential district. She also informed the inspections department that she would need to write this case up as to whether there is a home occupation on the subject property or not unless they could direct her to different part of the code or a different violation that they were trying to write. Ms. Back was told they stand behind the violation that was issued. They believe the truck is out of character and they are putting it with the code reference for home occupations.

**Rebuttal:**

Mr. Wolfe stated that he had 14 calls yesterday, July 22<sup>nd</sup>, which equates to about one car an hour or a 14 hour day. Six of those calls were between the hours of midnight and 6:00 A.M. this morning, July 23<sup>rd</sup>.

**Comments and Questions:**

Mr. Van De Wiele stated that if a person is sitting at his home waiting on a call from his employer does that constitute a home occupation. To him that does not make it a home occupation.

Mr. Swiney stated that in looking at the section regarding home occupation, Section 402, it states "artists, authors, catering, computer programming", all of these activities are activities where the actual work is being performed in the home. That is a different case from the case being presented by the applicant. It is true that he is taking the calls from his home and that operates out of his home but he does not seem to be in the same sort of work as these listed home occupations.

Mr. Van De Wiele stated it seems that this can almost be presented as a dispatching station.

Mr. Tidwell stated that the applicant can be on a call and receive another while performing the duties of the first call, so he does not think this is a home occupation.

Ms. Snyder stated that she does not think this is a home occupation. She saw the truck, it is huge but the truck is a function of the job. She understands the neighbors not wanting the truck in the driveway, but legally she does not feel this is a home occupation.

**Board Action:**

On **MOTION** of **TIDWELL**, the Board voted 4-0-1 (Henke, Snyder, Tidwell, Van De Wiele, "aye"; no "nays"; White "abstaining"; none absent) to **AFFIRM** the **Appeal** of an Administrative Official determining that there is not a home occupation at this residence (Section 1605); for the following property:

**N 81 LOT 1 BLK 20, WHITE CITY ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

**Mr. White re-entered the meeting at 3:48 P.M.**

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**OTHER BUSINESS**

None.

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**NEW BUSINESS**

None.

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**BOARD MEMBER COMMENTS**

None.

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There being no further business, the meeting adjourned at 3:49 p.m.

Date approved: 8/13/13

Frank X. White, II  
Chair