

BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1099
Tuesday, August 13, 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 Van De Wiele White, Vice Chair	Tidwell, Secretary	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, August 9, 2013, at 3:53 p.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.

Mr. Henke explained to the applicants that there were only four board members present at this meeting, and if an applicant would like to postpone his or her hearing until the next meeting he or she could do so. If the applicant wanted to proceed with the hearing today it would be necessary for him to receive an affirmative vote from three board members to constitute a majority and if two board members voted no today the application would be denied. Mr. Henke asked the applicants if they understood and asked the applicants what they would like to do. The applicants nodded that they understood and no one stood to request a continuance.

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

MINUTES

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Snyder, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Tidwell absent) to **APPROVE** the **Minutes** of the July 23, 2013 Board of Adjustment meeting (No. 1098).

UNFINISHED BUSINESS

21594—Shadow Mountain Behavioral Health

Action Requested:

Special Exception to allow a Community Group Home - Children's Home (Use Unit 2) in an RS-3 District (Section 1202.A). **LOCATION:** 2545 South Yale Avenue East (CD 5)

Presentation:

The applicant has withdrawn this case.

Interested Parties:

There were interested parties present.

Comments and Questions:

None.

Board Action:

No Board Action required; 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**

21596—Lou Reynolds

Action Requested:

Variance of the building setback from 50 feet to 17 feet in the IM District (Section 903, Table 2); Special Exception to allow off street parking on a lot other than the lot of record (Section 1301.D). **LOCATION:** 817 East 4th Street South, 312 South Lansing, and 313 South Kenosha (CD 4)

Presentation:

Lou Reynolds, 2727 East 21st Street, Tulsa, OK; stated the project involves a total of seven lots. The eastern four lots are zoned IM and the remainder lots are in the Central Business District. Because of the IM zoning there are parking requirements on the property. The buildings on the western side of the lot are going to be razed for the future parking lot and the building on the eastern side of the lot will be remodeled into an office building for a medical device company with 55 or 60 employees. The building on the eastern side of the lot was built before the current zoning code. As part of the approval of the appeal of the surface parking lot moratorium the proposed parking lot was approved by the Planning Commission and has been before the City Council. The western boundary will be landscaped and screened, and those plans have also been approved by the Planning Commission and the City Council. The hardship is that the building existed before the zoning code and the encroachment is no different than the other buildings on 4th Street.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **SNYDER**, the Board voted 4-0-0 (Henke, Snyder, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Tidwell absent) to **APPROVE** the request for a **Variance** of the building setback from 50 feet to 17 feet in the IM District (Section 903, Table 2); and the **Special Exception** to allow off street parking on a lot other than the lot of record (Section 1301.D), subject to conceptual site plan 3.10 and 3.11. The off-street parking has been by the City Council and shall be subject to the same conditions placed on the parking on June 13, 2013. Those conditions are: 1) all public concrete sidewalk will be removed and replaced to meet or exceed minimum city standards and as illustrated on the conceptual plan; 2) remove, replace or install all curb within the street right-of-way, adjacent to the parking and building site along South Lansing Avenue, East 4th Street South and South Kenosha Avenue, all construction shall meet or exceed minimum city standard curb systems; 3) all street trees shall be a minimum of 2.5" caliper and 10'-0" height and shall be planted and maintained similar to the conceptual plan provided, however, a minimum of three additional street trees in the green strip between the curb and sidewalk in the South Kenosha Avenue right-of-way shall be planted and maintained; 4) remove and replace all concrete approaches to alley, drives and parking areas; 5) provide ADA compliant ramps as required in public right-of-way. In approving the variance the Board finds that most of the buildings of the area were built to the property line and were built prior to the zoning code so 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. In approval of the special exception the Board finds

that the special exception will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; for the following property:

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

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NEW BUSINESS

21602—James Adair

Action Requested:

Variance to permit more than one sign per street frontage along Yale Avenue to permit 2 additional signs (Section 602.B.4.b); Variance to exceed 150 square feet of display surface area to 907.98 square feet of display surface area (Section 602.B.4.c). **LOCATION:** 6161 South Yale Avenue East **(CD 9)**

Presentation:

James Adair, 7508 East 77th Street, Tulsa, OK; stated he represents St. Francis Hospital for their new tower development. They would like to have the ability to place a logo only on the new tower facing northwest. The other sign is for an emergency sign which is a requirement to have an emergency sign near the entrance. St. Francis is located in an OM district which is very limiting so it will require St. Francis to return many times for the different towers or buildings.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 4-0-0 (Henke, Snyder, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Tidwell absent) to **APPROVE** the request for a Variance to permit more than one sign per street frontage along Yale Avenue to permit 2 additional signs (Section 602.B.4.b); Variance to exceed 150 square feet of display surface area to 907.98 square feet of display surface area (Section 602.B.4.c), subject to conceptual plan on 4.32, 4.33 and 4.34 for the logo sign and conceptual plan on 4.36, 4.37 and 4.38 for the trauma emergency center signage. The Board has found that the signage in question will identify hospital services and direct flow in through the property including the newly developed portions of the hospital. In granting 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 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:

BEG 350S & 300E NWC NW TH E1020.83 S1147.88 W1020.83 N1147.88 POB SEC 3 18 13 26.89ACS, BEG 60E SWC GOV LT 4 TH E250 N1147.88 E1020.83 N300 NW141.42 W430.98 S5 W650 SW39.05 S210 SW52.5 S250 W5 S876.81 E10 S20 TO POB LESS BEG 350S & 55E NWC SEC 3 TH NE17.40 S848.25 E20 S140 W10 S175.46 W10 N20 W10 N876.98 E5 N250 POB FOR RD SEC 3 18 13 14.43, WARREN MEDICAL PROFESSIONAL CENTER, WARRENTON, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21603—James Adair

Action Requested:

Variance to allow a projecting sign to extend above the building parapet wall from 3 feet to 5 feet (Section 1221.C.11); Variance to increase number of allowed projecting signs from 2 to 3 signs in the CH District (Section 1221.C.8). **LOCATION:** 2638 East 11th Street South **(CD 4)**

Presentation:

James Adair, 7508 East 77th Street, Tulsa, OK; stated he represents Aaron Meeks, owner of Group Investments, Inc., who also owns the Campbell Hotel which is the subject property. The building currently has a Campbell Hotel sign which has been on the building since it opened. There is a sign which has a permit that is being manufactured and is to be installed on the west end of the building which will be for Maxwell's Restaurant. The applicant would like to have a third projecting neon sign styled for the era of the building which would be on the other corner of the building. A wall sign is entitled by code but a projecting sign is considered a double-faced sign. This building would be limited to a quantity of two projecting signs so a request is being made for the third sign. Due to the hotel room windows the sign needs to be placed above the windows causing the sign to be above the roof line. The sign will not overhang the right-of-way because the right-of-way is north of the building line by seven feet. The conceptual site plan that was given to the Board in their agenda packets indicated that the sign would be approximately seventy feet west of the east end of the building. Mr. Adair would like for the seventy feet not be a qualification. It was a requirement when the permit was applied for because the Permit Office said there must be a footage stipulated on the plan for the application. The applicant would like to be able to move the sign more or less than seventy feet on the wall from the east end of the building.

Mr. Van De Wiele asked Mr. Adair if the Board was just being asked to approve the Spa and Salon sign. Mr. Adair answered affirmatively.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **SNYDER**, the Board voted 4-0-0 (Henke, Snyder, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Tidwell absent) to **APPROVE** the request for a **Variance** to allow a projecting sign to extend above the building parapet wall from 3 feet to 5 feet (Section 1221.C.11); **Variance** to increase number of allowed projecting signs from 2 to 3 signs in the CH District (Section 1221.C.8), subject to conceptual plan 5.15, 5.16 and 5.17. The Board finds that by the historic nature of this building the sign fits the historic nature, and with the hotel windows the sign needs to project above parapet wall. 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 1 THRU 9 BLK 1 & LTS 1 & 2 & 25 & 26 BLK 2 & 10 VAC ALLEY BETWEEN BLKS 1 & 2 LESS E15.3 LTS 1 & 2 & LESS W9.7 LT 25 & LESS W9.7 S10 LT 26 BLK 2, LT 24 BLK 2, MAX CAMPBELL ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21604—Wingfoot Commercial Tire – Greg Hale

Action Requested:

Special Exception to permit Use Unit 17 for commercial tire sales, service and warehousing in a CS district (Section 701). **LOCATION:** 107 South 111th East Avenue (CD 3)

Mr. White recused and left the meeting at 1:23 P.M.

Presentation:

Greg Hale, Wingfoot Commercial Tire Systems, 1000 South 21st Street, Fort Smith, AR 72902; stated the company is the commercial tire division for Goodyear Tire and Rubber Company and they operate locations around the country. Corporate has decided to open an office in Tulsa and they have leased the building located at 107 South 111th East Avenue. At one time there was a Use Unit 17 permitted but it expired

in April 2012, and they would like to have that use reinstated which would allow tire service work to be performed on the site.

Mr. Van De Wiele stated that in the prior approval the conditions placed on the approval stated that all the work was to be performed inside the building, and asked Mr. Hale if his company planned on performing all the work inside the building. Mr. Hale stated that he was correct. There are a number of bay doors on the site and the trucks will be pulled into one of the bays to do the tire changing. Most of the service work takes place off site, because trucks are dispatched from a 1-800 number to make vehicle repairs. The work that is performed on site is local business. There is no engine or transmission work performed on site.

Mr. Van De Wiele asked Mr. Hale what the hours of operation would be for the business. Mr. Hale stated the hours of operation would be from about 7:30 A.M. until about 5:00 P.M., but in the spring, summer and early fall the shop would operate on Saturdays until about 1:00 P.M. Also, there are service trucks that would be receiving calls so there will be times when a driver comes to the shop in the middle of the night to pick up a service truck, load the necessary tires and equipment needed and leave to perform a late night service call wherever the disabled vehicle may be.

Mr. Van De Wiele asked Mr. Hale if there would be any parts stored outside of the building. Mr. Hale stated there would not.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 3-0-1 (Henke, Snyder, Van De Wiele "aye"; no "nays"; White "abstaining"; Tidwell absent) to **APPROVE** the request for a **Special Exception** to permit Use Unit 17 for commercial tire sales, service and warehousing in a CS district (Section 701), subject to the condition that all repairs and service work at the facility be conducted inside. The hours of operation at the facility be limited to 7:30 A.M. to 6:00 P.M., Monday through Saturday with the exception that dispatching for off-site service work may occur 24 hours a day, 7 days a week. There is to be no outside storage of tires or other items for sale. 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 2 BLK 3, LT 3 BLK 3, WAGON WHEEL TRADE CENTER, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

Mr. White reentered the meeting at 1:27 P.M.

21605—San Juan Gaytan

Action Requested:

Special Exception to allow New and Used Auto Sales and Tire 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); Variance of the building setback from the centerline of North Lewis Avenue East from 85 feet to 43 feet for a used car and tire sales use in an existing building (Section 703, Table 2). **LOCATION:** 1417 North Lewis Avenue East (**CD 3**)

Presentation:

San Juan Gaytan, 1417 North Lewis Avenue, Tulsa, OK; an interpreter helped Mr. Gaytan present his case to the Board. Mr. Gaytan would like to run an auto and tire sales operation on the subject property, Monday through Saturday with the hours of operation being 8:30 A.M. to 6:30 P.M.

Mr. White asked if the business was already open and functioning. The interpreter stated Mr. Gaytan has the location but he wants to make sure he can obtain his permits to sell the cars and tires.

Mr. Henke asked what Mr. Gaytan was selling on the subject property now. Mr. Gaytan stated he is selling used tires and rims.

Interested Parties:

Debbie S. Pleu, 1409 North Lewis Place, Tulsa, OK; stated she lives on the street directly behind the subject property. She objects to the business being set up on the site because it is unattractive for the neighborhood and there are several of these same businesses in the area. The neighborhood does not need any more of these businesses. She also objects because they are already set up and conducting business. She objects to the sale of tires because the very nature of the product draws mosquitoes, which lowers the quality of life in the neighborhood.

Ms. Snyder asked Ms. Pleu if she lived directly behind the subject business. Ms. Pleu stated that she does not live directly behind the business but on the east side of Lewis Place.

Mr. Henke asked Ms. Pleu how long she thought the business had been operating. Ms. Pleu stated that the business has slowly been increasing. It started with a few cars then the number of cars kept increasing and now the lot is almost full.

Mr. Van De Wiele asked Ms. Pleu to estimate how many cars she thought were on the lot. Ms. Pleu stated she did not count the cars but estimated there are about 24 cars on the lot.

Rebuttal:

Mr. Gaytan and the interpreter came forward. The interpreter stated that Mr. Gaytan says there is another tire or mechanic shop about 50 feet in front of his tire shop.

Mr. Henke stated that the Board actually denied a request in 2007 for auto repair for a lot that is across the street from the subject property. There were other locations that were approved in 1996, 1995 and 2001.

Mr. Van De Wiele asked Mr. Gaytan if he was going to perform any repairs on site. Mr. Gaytan stated no, that he is just fixing flats and selling used cars.

Ms. Back stated that when Mr. Gaytan made the purchase the business was in operation on the site.

Mr. Henke asked Mr. Gaytan when he purchased the business. The interpreter stated that Mr. Gaytan starting renting the location about a year ago.

Mr. White asked if the display area, the sales office and the bays were in place when he started renting the site. The interpreter stated for Mr. Gaytan that he has made it to what it is today to have the cars and tires on the site, but the property used to have a mechanic shop on it.

Mr. Henke stated that the mechanic shop was not an approved use. Mr. White stated that the subject property used to be a filling station many years ago, and the site is quite old.

Ms. Snyder asked Mr. Gaytan if there was a way for him to take the tires totally out of the weather. Mr. Van De Wiele stated that the mosquito issue is not over the tires with the wheel or rim attached being displayed, but it is over the tires that do not have a wheel or rim attached because they can have standing water in them. Mr. Gaytan stated that it is going to be hard to stop the mosquitoes because there are mosquitoes in the trees and everywhere. Mr. Van De Wiele stated that the problem with the tire specifically is when the tire is standing upright the inner bottom can collect water and allow it to stand stagnant.

Mr. Van De Wiele asked Mr. Gaytan if he had room indoors to store the tires. Mr. Gaytan stated that he did not, but he does take the tires on display in the front of the store in at night.

Mr. White asked Mr. Gaytan how many tires are left outside overnight. Mr. Gaytan stated that all the tires that are on the sides and the rear of the building which is about 500 tires.

Ms. Snyder asked if all the tires were new or if some of them are used. Mr. Gaytan stated they are used tires that are for sale. The new tires are stored inside the building.

Mr. White asked Mr. Gaytan what is the condition of the fence at the back of the property. The interpreter stated for Mr. Gaytan stated it is an old fashioned screen fence and about six feet tall. Mr. Gaytan stated that it is a good thing he has the tire shop at that location because people can come in needing tires and he helps a lot of people by extending them credit.

Mr. Van De Wiele asked Mr. Gaytan how many cars he intended to have on the lot for sale at any one time. Mr. Gaytan stated there would be at least 20 cars.

Ms. Miller stated some cities have ordinances that require tires to be some kind of outside storage building. It could be a temporary outside storage building that could be brought in, because there is no way to keep water out of the tires even if they are covered. So bringing in some sort of outside storage building is a possibility.

Mr. White stated that what could be done is to place a condition on the approval if the Board decides to approve, is have the lot for the automobiles only and have the tires be in a storage building similar to the conditions placed on the tire shop at 51st Street and Union. In fact in that case the applicant brought in an enclosed trailer for the tire storage. There was also a building extension approved on Pine just east of the subject property so the tires could be stored inside.

Mr. Van De Wiele suggested the Board continue this case so staff can have a meeting with the applicant and go over all the options for storage with the applicant.

Ms. Back asked the Board to clarify the Board's statement of "used tires out of sight, out of the weather" is the Board speaking about during the daytime for sales or advertising, or is the Board wanting the used tires stored away 24/7 365 days a year? Mr. Van De Wiele stated he has a bigger problem with the tires that do not have the wheels in them because that is more of a mosquito magnet and does not have a problem of some wheeled tires displayed in the front of the building.

The interpreter stated that Mr. Gaytan requests approval of special exception so he can sell tires and cars. Mr. Gaytan stated he needs an approval to send to Oklahoma City so he can receive his identification number to be able to sell the cars. Mr. Van De Wiele stated the Board would feel more comfortable approving the request in its entirety with a site plan showing the proposed layout of the business.

Comments and Questions:

None.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 4-0-0 (Henke, Snyder, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Tidwell absent) to **CONTINUE** the request for a **Special Exception** to allow New and Used Auto Sales and Tire 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); Variance of the building setback from the centerline of North Lewis Avenue East from 85 feet to 43 feet for a used car and tire sales use in an existing building (Section 703, Table 2) to the Board of Adjustment meeting on August 27, 2013; for the following property:

LT 14 BLK 2, LTS 15 16 & 17 BLK 2, BELLEVUE HGTS, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21606—Hereun Steve Choi

Action Requested:

Variance for the required number of parking spaces from 86 spaces to 47 spaces in a CS District (Use Unit 14)) (Section 1214.D). **LOCATION:** 11413 East 21st Street South (CD 6)

Presentation:

Hereun Steve Choi and Sungah Oh, United Tops and Bottoms, 11413 East 21st Street, Tulsa, OK; Sungah Oh stated they are using the property for a retail clothing store selling shoes and clothes. Before their use the store was used as a carpet retail store. The building is 20,000 square feet and originally a carpet store was using 10,000 square feet for storage purposes and the remaining 10,000 square feet as a show room. The carpet store had the 47 parking spaces approved originally. Then it was converted to a clothing store where they used 5,000 square feet for storage and 15,000 square feet for sales. That is how the store was set up when they purchased it and they have been on site for five years. They looked at the calendar using the month of July because that is the peak time of year for them to calculate the parking space requirement. Even when they are busy their clients do not use even half of the parking lot and it has never been full, not even in the holidays. To meet the 86 parking space requirement they would need to cut away part of the building because there is no room for expansion of the parking lot.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Snyder, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Tidwell absent) to **APPROVE** the request for a Variance for the required number of parking spaces from 86 spaces to 47 spaces in a CS District (Use Unit 14)) (Section 1214.D). Finding that since the original designation of 47 parking spaces the use of the structure has changed as for the type of business. The new business, while it requires 86 parking spaces, per code in application the applicants who have been on the site for five years are not utilizing even half of the 47

parkings spaces that are currently parked on the lot. 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 1 BLK 2, LT 2 BLK 2, LT 3 BLK 2, 21 GARNETT PLACE RESUB PRT L1 & L2-3
GARNETT PLAZA, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

08845-A—City of Tulsa Parks – Jack Bubenik

Action Requested:

Modification to previously approved site plan (BOA-08845) to construct additional park amenities (shelter, fencing, sidewalks, benches and picnic tables) and replace existing sign. **LOCATION:** 3825 West 53rd Place South **(CD 2)**

Presentation:

Jack Bubenik, City of Tulsa Parks Department, 175 East 2nd Street, Tulsa, OK; stated this request is for a modification to a previously site plan which will add a shelter, benches, fencing and a new sign.

Interested Parties:

Dorothy Brantley, 3702 West 52nd Place, Tulsa, OK; stated she wanted to know where the fencing for the park would be placed, where the sidewalks would be in the park, and what type of shelters were going to be placed in the park. She does not disapprove to any improvements to the park but she would like to have clarification on the plans for the park.

Rebuttal:

Mr. Bubenik came forward. He stated the fencing was going to be placed at the north and south ends of the sports court to keep basketballs from flying into the park. The new proposed sidewalks will be from the old parking lot to a 25 foot shelter, and from the existing sidewalk to the 25 foot shelter. The additions will be a new water fountain and a couple of park benches. There will also be some picnic tables that will be under cover. These improvements are not tax payer funded, there is a donor donating approximately \$60,000 to be used on the site.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Snyder, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Tidwell absent) to **APPROVE** the request for a **Modification** to previously approved site plan (BOA-08845) to construct additional park amenities (shelter, fencing, sidewalks, benches and picnic tables) and replace existing sign for Shlegel Park. This will include future modifications and improvements commensurate with park amenities, and no further Board of Adjustment approval required finding the proposed improvements to be compatible with the neighborhood. This approval will be subject to conceptual plan 9.7 and 9.8; for the following property:

ALL BLK 14, SOUTH HAVEN AMD, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21607—John Story

Action Requested:

Minor Special Exception to permit a 32 foot recreational vehicle to be parked or stored in the required front yard less than the required 12 feet from the face of the curb (Section 402.B.7.a.5.[d]). **LOCATION:** 1505 South 140th Avenue East **(CD 6)**

Presentation:

John Story, 1505 South 140th East Avenue, Tulsa, OK; stated all the requirements for parking in the front yard except for the 12 foot setback have been met. The recreational vehicle can not be parked in the rear yard because there is no access. The vehicles can not be parked in the garage because it will not fit, and there is no other place to park the recreational vehicle. It clears the sidewalk and is parked on the concrete of the driveway. There is no room between the houses to get the vehicle into the backyard. There is no access to the backyard from any public street or right-of-way.

Mr. Van De Wiele asked Mr. Story how short of the 12 feet is the vehicle? Mr. Story stated that it is the width of the sidewalk and the strip of grass next to the curb, which he thought was about eight feet. The vehicle is pulled up within three inches of the garage door.

Mr. Story stated the recreational vehicle is not used for dwelling purposes and it is not permanently connected to sewer lines, water lines, or electricity. It is not used for storage of goods.

Mr. Henke asked how the neighbor's recreational vehicle different from Mr. Story's vehicle. Mr. Story stated the neighbor's house sits farther back on the lot and their garage is recessed.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Snyder, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Tidwell absent) to **APPROVE** the request for a Minor Special Exception to permit a 32 foot recreational vehicle to be parked or stored in the required front yard less than the required 12 feet from the face of the curb (Section 402.B.7.a.5.[d]). 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 2 BLK 4, EASTLAND PARK, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21608—Claude Neon Federal Signs

Action Requested:

Variance to allow a projecting sign to exceed the maximum permitted height measured from the mean curb level of the lot, from 25 feet to 33 feet 6 inches (Secion 1221.E.1). **LOCATION:** 307 East Brady Street North (**CD 4**)

Presentation:

Bob Dale, Claude Neon Federal Signs, 1225 North Lansing Avenue, Tulsa, OK; stated he is speaking on behalf of Living Arts of Tulsa. They are located in the Brady Arts District and it is the perfect place for them. They are located in an older building and there are unique challenges to the area. Parts of the Brady District is hilly and the Living Arts building is located at the bottom of one of the hills. Because they are lower the 25 foot projecting sign ruling will put them lower than many of the other signs in the area, thus they are requesting compensation for this. The older building has an architectural feature that is unique to the era and it was designed to have a sign up higher on the building. It is requested to place the sign on the building where it belongs and have an opportunity to be more visible to the public on the street.

Mr. Van De Wiele asked Mr. Dale if the sign is lighted. Mr. Dale answered affirmatively.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 4-0-0 (Henke, Snyder, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Tidwell absent) to **APPROVE** the request for a

Variance to allow a projecting sign to exceed the maximum permitted height measured from the mean curb level of the lot, from 25 feet to 33 feet 6 inches (Section 1221.E.1), subject to conceptual plan 11.17. The Board has found the sign will be in keeping with the historical character of this older building; not only of this building but other buildings in the same vicinity. The grade change around the property also contributes to the hardship and need for raising of the sign. 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 4 & W10 VAC ALLEY ADJ ON E BLK 25, TULSA-ORIGINAL TOWN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21609—A-MAX Sign Company, Inc.

Action Requested:

Variance to allow more than 1 sign on the west elevation (Section 602.B.4.b); Variance to allow an additional 181 square feet of display surface are for 2 wall signs on the west elevation (Section 602.B.4.c). **LOCATION:** 6111 East Skelly Drive South (CD 5)

Presentation:

Bruce Anderson, 9520 East 55th Place, Tulsa, OK; stated this request is for the west elevation of the Tulsa Technology and Tulsa Community College building. There are two existing signs on the west elevation which are old and dilapidated. The two existing signs will be taken down and new signs be installed in their place. Tulsa Technology and Tulsa Community College are the only two occupants in the building. The lot is a unique lot because the west side of the lot is zoned office and the east side of the lot is zoned commercial; therefore, the west side of the building requires a variance. The hardship is the unique zoning of this building and the way the lot was split.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Snyder, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Tidwell absent) to **APPROVE** the request for a Variance to allow more than 1 sign on the west elevation (Section 602.B.4.b); Variance to allow an additional 181 square feet of display surface area for 2 wall signs on the

west elevation (Section 602.B.4.c), subject to conceptual plan 12.14. Finding that the two signs requested are replacing two existing older dilapidated signs that have been in existence for some time. The two signs represent all the businesses that are in the subject structure. The zoning anomaly insofar as the east side of the building would not require relief but the west side of the building does require relief. In order to have the proper visibility the signs must be on the west side of the building. 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:

LT 1 BLK 1, TULSA SCOTTISH RITE SUB AND RESUB PRT TULSA SCOTTISH RITE, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21610—J. R. Donelson

Action Requested:

Variance of the minimum street frontage requirement from 30 feet to 0 feet in the RS-1 District (Section 206). **LOCATION:** 11908 South Sheridan Road East (CD 8)

Mr. Henke left the meeting at 2:22 P.M.

Presentation:

J. R. Donelson, 12820 South Memorial Drive, #100, Bixby, OK; stated he represents the owner of the property. The property is a five acre piece of land. Approval of today's request will allow the property owner to appear before TMAPC for a lot split. Currently the property has an existing single family residence with an attached garage located on it. The owner wants to utilize the driveway that goes to the existing house and split the property into four tracts. The two tracts that face Sheridan will be fine for building sites, but the third tract that has the existing detached garage is the tract that requires the zero frontage with regards to Sheridan Road. The owner has been before the TAC meeting and discussed the property with Development Services the future easements that might be required.

Mr. Van De Wiele asked Mr. Donelson if he had the mutual access agreement as a dedicated public street would there be 30 feet of frontage? Mr. Donelson stated if the owner had done this in regards to platting the property and dedicated the right-of-way then there would be a minimum of 50 feet. Or it could be done as a PUD and it would reduce the useful amount of property. Yes, the platting process would provide the requirement for the access to the subject tract. The owner, at this time, does not desire

to go through the platting process as he has the opportunity to split the five acres into four pieces and allowing the detached garage to remain on one of the pieces. All four pieces of property will be either an acre or larger once the lot-split goes before TMAPC with the Board's approval today.

Mr. Swiney asked Mr. Donelson if his client would not object to being bound by mutual access easement by default on all four of the potential lots. Mr. Donelson stated no, matter of fact the owner has had him prepare a 30 foot access easement and he is prepared to sign the document once TMAPC grants the lot splits. Mr. Swiney asked if once the potential lots are sold off to future buyers the mutual access easement would apply to each one. Mr. Donelson answered affirmatively.

Mr. Henke re-entered the meeting at 2:24 P.M.

Interested Parties:

Marc Bullock, 5507 East 106th Place, Tulsa, OK; stated his background is that he has multiple development companies and construction companies all within a half mile radius of the subject property. In the last ten years these companies have spent millions of dollars on constructing eight subdivisions in the area. Every regulation has been complied with to make sure the subdivisions are better than above standard. The applicant has made suggestions that there have two other variances that have been approved since 1994, and 20 years is a long time. There have been a lot of changes in that 20 years. There is only 360 acres of AG land left in the city limits of south Tulsa. The 74137 zip code is the highest household income average zip code in the state of Oklahoma, mainly because of the developments and the construction that has happened in residential and commercial. He is not opposed to more residential lots but wants the proper process and the proper method followed. As he understands it, the owner of the subject property is an owner that is now deceased. In the documentation that he has seen it is shown to have the deceased owner and another owner in California so he is not who owns the property. He understands that the applicant must provide a hardship. He has read all the documentation that he can and in his opinion he cannot see a hardship for the subject property. The applicant is currently zoned for RS-1 and they have submitted their application to TMAPC for the requested lot splits. They have an agreed 50'-0" x 330'-0" arterial right-of-way that will be dedicated to the City of Tulsa. They have an agreed mutual access easement of 30'-0" x 500'-0" for the purpose of a public street that will be dedicated to the City of Tulsa. The creation of a full perimeter, 17.5 feet times 1,850 feet for utility access have been granted for that purpose. The owner has agreed to an area of 10'-0" x 180'-0" for a sanitary sewer easement that will be dedicated to the City of Tulsa. These dedications and easements will be approximately 40% of the applicants land to the City of Tulsa but with no requirement by the owner to comply with the City of Tulsa subdivision requirements or restricted covenants. This is a subdivision request. Why does the owner not have to be platted. All of the companies lands have had to be subdivided. They have had to be platted to be under the regulations and covenants. His primary concern is that he

owns the property directly to the south of the subject tract and they have adjoining property lines. The owner has every right to a lot split. He has every right to construct homes on the subject property but it will disturb the land. It will create erosion and water runoff. Tulsa prides itself for being number one in stormwater management. At this point there is a request for a variance so that won't have to be done. This is a subdivision and needs to go through the regular platting process as anyone else has had to do.

Mr. Henke stated that the Board of Adjustment does not address stormwater management.

Rebuttal:

Mr. Donelson came forward. The property originally was owner by Randy Picard and has passed away. The property in the last 30 or 45 days has transferred title to Mr. Greg Woodard who is now the owner of the subject property. Mr. Woodard is the person requesting the lot split, and he is entitled to split the property into the four large tracts which would be estate lots understanding that the property abuts Mr. Bullock's to the south. There are a number of large trees there and the owner wanted to maintain the integrity of the five acre piece. The existing home will stay on the land and Mr. Picard, prior to his death, had drawn up the paperwork to split the subject property into estate tracts for the future. Unfortunately he was not able to do this. Presently the house, as it exists, is on septic tank and well water because when it was constructed the city limits of Tulsa did engulf the subject property and those services did not exist. The City of Tulsa asked if the owner would be willing to agree to all necessary easements and right-of-way agreements and the answer is yes. He believes the owner has met the intent of the lot split as well as providing what the City of Tulsa Development Services has asked the owner to do to provide services the four large estate tracts. As a result of that, the reason the owner is requesting a variance, is because one of the tracts would not meet the requirement of the frontage along South Sheridan Road, even though it would meet the frontage of the existing driveway. There is a portion of the property that has a ditch through it. The City of Tulsa and Tulsa County constructed some box culverts along South Sheridan on the subject property. So any one of the three remaining tracts, because the existing house will remain, still must the requirements set by the City of Tulsa to receive a building permit for a single family dwelling.

Mr. Bullock came forward stated that two tracts, one on the north and one on the south that faces Sheridan Road, does not have a ditch but a full blown creek running across it. Several properties have the creek running through and the creek is not improved. The creek flows to an enormous detention pond at 116th Street between Kingston and Sheridan. It holds the creek water dramatically, so the concrete flume that was constructed on South Sheridan there is a tremendous amount of water that flows through the creek and goes down to 121st Street. What is remiss here is that the City of Tulsa did not have enough money to install the proper 100 year culvert, they only installed a 50 year culvert. Every time there is a subdivision put onto the property the companies are required to have calculations based on the amount of water that is

coming into the structure at the intersection. It is a tremendous amount of water. If the property owner decides to disturb the land there are no requirements to have any type of stormwater system at the back of the property to catch the stormwater runoff before it passes onto the surrounding property. Mr. Bullock stated he wanted to purchase the subject property and he went to the City of Tulsa to see what it would take to manage the stormwater runoff. It was \$350,000 worth of concrete culverts that had to be installed in twin across the property in order to feed into the flume. That does count any of the other infrastructure measures that would be need to installed to make a subdivision. This is not something he is here to rant and rave over, it is something that he has has to install during the last ten years because it has been important to the City of Tulsa.

Mr. Van De Wiele if the stormwater management was being passed over if just a lot split in granted. Mr. Bullock answered affirmatively. He stated by the platting process everything is done properly, i.e., attaching into the sewer system. His concern is the water.

Mr. Donelson came forward and stated that in regards to Mr. Bullocks concerns with the drainage and the water comes down the ditch, he has been told by the director of Development Services that a study is being performed by another party on the property located north because that owner wants to improve the drainage way that goes across his property. The Picards have owned the land with drainage pipes across the subject property and driven across the pipes for years. The current owner stated that if those pipes were good enough for the Picards it should be good enough for him. But the main reason he is here today before the Board of Adjustment is because he would like to sell the detached garage on a large one acre piece of property. The owner could go before the Planning Commission for a lot split for three and there would be no reason for a variance.

Mr. Van De Wiele asked Mr. Donelson why he chose not to go through the platting and the subdivision process. Mr. Donelson stated the owners chose this route because he knows to go through the PUD, zoning of space, platting process would take a longer period of time. And the City would require a few things to be written in the PUD and it would be more costly to the owner to achieve the same four tracts of land. It is an economic factor.

Ms. Snyder asked Mr. Donelson if the application before the TMAPC is for a public street. Mr. Donelson stated it is for a 30 foot access easement that is dedicated to the public to drive on to. The City of Tulsa will not maintain it. Ms. Snyder asked Mr. Donelson if TMAPC is requiring him to come before the Board of Adjustment before they hear his case. Mr. Donelson stated they are requiring the Board of Adjustment action prior to hearing the lot split application.

Mr. Van De Wiele asked Mr. Swiney if the Board would be circumventing a process that is set for the good, the other way, the right way? Mr. Swiney stated that when he first saw the application he questioned why the owner would not plat the land. It seems an

appropriate process to just plat the land. The owner has the right to a lot split rather than platting, but platting is more expensive than a lot split. As long as the access is assured, as it is with the access easement agreement, he thinks the owner has the right to have what he wants.

Mr. Van De Wiele asked if the applicant goes this route and the Board approves, is there the possibility that the subdivision process is circumvented such that otherwise required infrastructure improvements would not be required? Mr. Swiney stated that he believes each individual lot owner, as he develops his individual lot, would be responsible for things such as drainage and utilities. No he does see an evasion of subdivision requirements. Mr. Van De Wiele asked if the City would require the new land owner of the one of the lots that has the ditch running across to put in half of the cost for drainage system the same as the City does with a developer? Mr. Swiney stated that he thought that would be true.

Ms. Miller stated that she does not fully understand the argument about the land being a PUD because it is zoned RS-1. Mr. Donelson stated that the reason for the PUD is if the owner platted and then installed a 50 foot dedicated road then it would take away from property that they want to utilize for an estate tract. Not wanting to dedicate a full 50 feet by the 30 foot access the owner can not keep the existing driveway. The owner does not want to remove the driveway and have to install a paved street. They want to utilize the existing driveway and they can do so with a lot split. Ms. Miller stated the applicant definitely has the right to request a variance. The big difference between this request and the platting request is that in the variance request the owner must prove a hardship.

Mr. Bullock stated that the applicant keeps calling the five acre tract an RE, or residential estate lots, and the land is zoned RS-1. Therefore, he has the right split the land again and still meet the requirements. All the applicant's arguments are based on one thing. He wants a hardship based on cost and that is not a hardship.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Snyder, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Tidwell absent) to **DENY** the request for a Variance of the minimum street frontage requirement from 30 feet to 0 feet in the RS-1 District (Section 206), finding that the hardship is monetary and self-imposed; for the following property:

S/2 NE SE SE SEC 34 18 13 5 ACS, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21611—Nathan Chapman

Action Requested:

Special Exception to allow a maximum fence height in the side and rear yard from 8 feet to 10 feet in an RM-2 District (Section 210.B.3). **LOCATION:** 2448 East 7th Street South **(CD 4)**

Presentation:

Mike Chapman, 2448 East 7th Street, Tulsa, OK; no presentation was made but the applicant was available for questions.

Mr. Van De Wiele asked Mr. Chapman how the gate for the driveway was going to open. Mr. Chapman stated the gate will run parallel to the fence and be motorized.

Ms. Snyder asked Mr. Chapman where he started building the fence on the property. Mr. Chapman stated he started on the southwest corner and as he continued with the fence it became higher to keep it level.

Mr. White asked Mr. Chapman why he continued going upward since he started at eight feet in height. Mr. Chapman stated it is a horizontal fence and in order to keep the design element at the top it needs to be level.

Mr. Henke read an e-mail the Board received from Ms. Maria Barnes. The letter stated the property owner has not contacted the home owners association in regards to this issue. Some home owners feel a ten foot fence will not be appropriate for the neighborhood. Mr. Henke stated that he did not see any protestants in attendance today and did not see any other e-mails regarding to the fence. Mr. Henke asked Mr. Chapman if Ms. Barnes had contacted him. Mr. Chapman stated that she had not contacted him, he did not know she had submitted anything.

Ms. Back stated the e-mail from Ms. Barnes had come in today's morning e-mail and she had forwarded it to Mr. Chapman but she was unable to contact Mr. Chapman to inform him of the e-mail.

Mr. White asked Mr. Chapman if his neighbor to the west had any problem with the proposed fence. Mr. Chapman stated that he does not.

Mr. Swiney asked Mr. Chapman if he planned on painting the fence. Mr. Chapman stated his plans are to stain the fence.

Mr. Van De Wiele asked Mr. Chapman if he planned on installing the same fence on the west side of his property. Mr. Chapman answered affirmatively.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Snyder, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Tidwell absent) to **APPROVE** the request for a **Special Exception** to allow a maximum fence height in the side and rear yard from 8 feet to 10 feet in an RM-2 District (Section 210.B.3), subject to per plan of 14.9 for the location and height of the fence and per plan 14.12, 14.13, 14.14, 14.15 and 14.16 for the style. 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:

E 55 LOT 6 BLK 2, HIGHLANDS ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21612—Wallace Engineering – Jim Beach

Action Requested:

Variance of required parking from 10 spaces to 0 spaces (Use Unit 11) in a CH District (Section 1211.D). **LOCATION:** 415 South Owasso Avenue East **(CD 4)**

Presentation:

Jim Beach, Wallace Engineering, 200 East Brady, Tulsa, OK; stated this is an existing building that is about 2,800 square feet. The owner has three small businesses that will be officing out of the subject building. The building exists on a very small parcel that is zoned CH and has been there for many, many years. The building essentially goes from property line to propoerty line and was established before the CH zoning had a parking requirement. There is no parking on site and it would be impossible to provide any parking. There will be four or five employees and very little to no customer traffic so they propose to provide all of the parking on street along Owasso in front of the property. The application of the parking requirements for an office use on this property would create an unneccessary hardship due to the fact that the existing building extends to the property lines leaving no space for the parking.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **SNYDER**, the Board voted 4-0-0 (Henke, Snyder, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Tidwell absent) to **APPROVE** the request for a **Variance** of required parking from 10 spaces to 0 spaces (Use Unit 11) in a CH District

(Section 1211.D). The Board has found that the property extends to the edge of the property so there is no parking available on the site. The property is in the Pearl District which is under a Form-Based Code, or will be soon, which will require no parking. 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:

W75 LT 8 & W75 OF S12 LT 9 BLK 22, N13 LT 9, BLK 22, BERRY ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

19937-A—Eller and Detrich – Joshua Tietzsort/Andrew Shank

Action Requested:

Modification of a previously approved Special Exception (BOA-19937) to approve release of certain properties from Tie Agreement. **LOCATION:** In the vicinity of 2646 East 6th Street South (CD 4)

Presentation:

Andrew Shank, 2727 East 21st Street, Suite 200, Tulsa, OK; stated this is a follow-up to relief that was obtained in 2004 to allow a special exception use for a church at the hard corner, and the contemplation of the master development of the surrounding property. As a condition of that approval the Board did a lot tie agreement. The tie agreement was executed with the City of Tulsa and filed with Land Records and is now a covenant running with the land. The church has the opportunity to now continue its master plan. As a part of the process they plan to fund part of the plan by selling Lot 20, and it will be developed as a single family residence. Lots 18 and 19 will be conveyed to a developer, and they currently have apartments on them. Those apartments will be demolished. The church will retain an option to repurchase those two lots and retie them to the church properties and continue with the church's master plan. The future of Lots 18 and 19 will be parking for the church. Currently the church plans to build a fellowship hall in the area of the existing parking lot.

Mr. Van De Wiele asked Mr. Shank if once the apartments were razed if that area would where a church parking lot would be placed. Mr. Shank stated yes per the conceptual plan.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 4-0-0 (Henke, Snyder, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Tidwell absent) to **APPROVE** the request for a **Modification** of a previously approved Special Exception (BOA-19937) to approve release of certain properties from Tie Agreement, specifically releasing Lots 18, 19 and 20 as shown on page 16.8 of the Board's agenda packet. This is with the understanding that if the applicant were to reacquire Lots 18 or 19 in the future, or other property in the immediate vicinity of the subject property, the applicant will cause such properties to be subject to the modified tie agreement. Finding that the modification will be compatible with and not injurious to the surrounding residential area and meets the previously granted variances to the bulk and area requirements or meets the zoning requirements per code; for the following property:

LOT 6 BLK 2, LOT 7 BLK 2, LOT 8 BLK 2, LOT 10 BLK 2, W36' LOT 11 BLK 2, E14' OF LOT 11 W22' OF LOT 12 BLK 2, S58' E33' OF LOT 12 BLK 2, LT 16 BLK 2, LTS 13 14 15 BLK 2, LOT 17 BLK 2, LOTS 18 & 19 BLK 2, LT 20 BLK 2, HIGHLANDS 2ND ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21613—Roy Johnsen

Action Requested:

Verification of the Spacing Requirement for an Adult Entertainment Establishment (Cigar Bar) (Section 1212a.C.5); **OR** Variance to permit an Adult Entertainment Establishment (Cigar Bar) within 300 feet from a church, park, school, or thin 50 feet from an R District (Section 1212a.C). **LOCATION:** 10051 South Yale Avenue East (NE/c of East 101st Street South and South Yale Avenue) **(CD 8)**

Presentation:

Roy Johnsen, Williams Tower One, One West 3rd Street, Suite 1010, Tulsa, OK; stated this center is known as the Shops of Seville. What prompts this application is the desire to have a tenant within one of the buildings in the center to have a cigar bar. Basically a cigar bar is a place where a person can purchase quality cigars, and there is alcohol served. These bars are quite popular, and under the code it is a 12A use. This property was developed as a Planned Unit Development, and there recently has been an application filed to have a minimum of two permitted uses because the approved PUD did not permit 12A. There is a bistro located on the property which is considered a 12 which is a restaurant with an accessory bar. The Planning Commission has approved the 12A use in the PUD limited to a cigar bar provided it met the parking requirements. There is no parking issue on this property and no issue as to what the use is. The question is the spacing which under the code in 12A requires the action of the Board of Adjustment. By one drawing Mr. Johnsen has placed on the overhead projector shows the subject use to be 7'-6" short on the spacing requirement. Mr. Johnsen stated this measurement was to the nearest part of the building, but under the code it is to be measured to the nearest access point or door. Mr. Johnsen stated he

measured the distance he came up with the radius being 8'-6" larger meeting the 300 foot requirement. The church has issued a letter of approval. The tenants of the center are okay with the proposed use of the space. The residential area to the east of the center have no objections. Mr. Johnsen stated there is also a conflict within the code that suggests if the church or school is across the street from the subject property that it be viewed as though it is on the same side of the street. As an attorney Mr. Johnsen thinks this part of the code extremely and poorly written and can have several interpretations and flawed. He does not know what it means. This conflict is why Mr. Johnsen presented the alternative portion of today's request, because if the church is to be viewed as if it is on the same side of the street there would not be the 300 feet required.

Mr. Van De Wiele asked staff if the measurement is to be taken from the corner of the property or is the measurement to be taken from the nearest access. Mr. Swiney stated that he and his colleagues have reviewed this part of the code, and they agree that it is subject to several interpretations. Mr. Swiney stated that he would approve the measurement to be from door to door.

Ms. Back stated that 1212A.c.b states "shall be located a minimum of 300 feet from a public park, school or church which shall be measured from the nearest point on the property line of a park, school or church to the nearest public entrance door of an adult entertainment establishment".

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Snyder, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Tidwell absent) I move that based upon the facts in this matter as they presently exist, we **ACCEPT** the applicant's verification of spacing for the proposed adult entertainment establishment, Cigar Bar, subject to the action of the Board being void should another adult entertainment establishment or other conflicting use be established prior to the expansion of this adult entertainment establishment. There is no action on the Variance request required; for the following property:

LT 1 BLK 1, WINBURY CENTER, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

OTHER BUSINESS

None.

NEW BUSINESS

None.

BOARD MEMBER COMMENTS

None.

There being no further business, the meeting adjourned at 3:30 p.m.

Date approved: _____

8/27/13



Chair