

**BOARD OF ADJUSTMENT**  
**MINUTES** of Meeting No. 1139  
Tuesday, May 12, 2015, 1:00 p.m.  
Tulsa City Council Chambers  
One Technology Center  
175 East 2<sup>nd</sup> Street

<b>MEMBERS PRESENT</b>	<b>MEMBERS ABSENT</b>	<b>STAFF PRESENT</b>	<b>OTHERS PRESENT</b>
Henke, Chair Snyder Tidwell, Secretary Van De Wiele White, Vice Chair		Miller Moye Foster Sparger	Swiney, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Thursday, May 7, 2015, at 9:42 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. Moye read the rules and procedures for the Board of Adjustment Public Hearing.

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**MINUTES**

On **MOTION** of **VAN DE WIELE**, the Board voted 4-0-1 (Henke, Snyder, Van De Wiele, White "aye"; no "nays"; Tidwell "abstaining"; none absent) to **APPROVE** the **Minutes** of the April 28, 2015 Board of Adjustment meeting (No. 1138).

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**UNFINISHED BUSINESS**

## **21855—Acura Neon Signs – Yoko Lam**

### **Action Requested:**

Variance to allow an electronic message center within 200 feet of an R District (Section 1221.C.2.c). **LOCATION:** 3515 South Harvard Avenue (CD 9)

### **Presentation:**

**Bob Feist**, 3515 South Harvard, Tulsa, OK; thanked the Board for allowing the church to work with the Board of Adjustment and the neighbors so the community can be a better place. Christ Church celebrated their 60<sup>th</sup> year of ministry in the midtown neighborhood in October. When the church was established it was on the edge of Tulsa and it was in a new growing area. The church has learned through the 60 years is that it must adapt and change, i.e., websites and social media. One of the ways the first time guests tell him that they heard about the church is by seeing the church's sign. The sign needs to be updated because it is becoming more difficult to maintain and it is dangerous when the letters are being changed each week. The current sign is not energy efficient either. One of the greatest hardships a church can have is a declining membership. An upgraded sign will help the church to better share with the community news about the church's preschool, the Boy Scout Troop, the widow ministry, the church's celebrated recovery, the divorce recovery ministry and other ministries within the church. The church came to Board with the initial sign design on February 24<sup>th</sup>. The day before that meeting the church became aware of petition signed by some of the neighbors and was surprised by that. At that meeting, at the suggestion of the Board, the church initiated a meeting to meet with the neighbors sharing the church's plans and listening to their concerns. Mr. Feist stated that he went house to house with a friend and had two different neighborhood meetings. In visiting house to house people appreciated being able to see the sign design and to ask questions. Of the 13 houses on Gary Place eight stated they would not have any problem with the proposed sign, and four of the houses back up to Harvard directly across from the church. Of those four houses three people stated opposition. The church hosted the first meeting on March 18<sup>th</sup> and only six people attended; four had already let him know that they were opposed to the proposed sign. The proposed height and brightness of the sign were the main concerns of the neighbors, and the impact it would have on property values. With the input that was received the church requested a continuance to consider new sign options. After consideration and at the suggestion of the neighbors a new sign design was drawn up and it was more of a monument type sign that would be lower to the ground. The new sign design is ten feet tall which is half the height of the current sign with the top of the digital board being 7'-9" tall meaning the neighbors probably won't see the new sign. The new sign represents a 25% reduction in the brightness over the current fluorescent lit sign. Another meeting was scheduled on April 23<sup>rd</sup> with the neighbors to show them the church was interested in their input and that their concerns were heard. Flyers were distributed to the closest 30 homes in the neighborhood and Ms. Lynne Tucker, President of the home owners association, know of the meeting. There were two people that attended the April 23<sup>rd</sup> meeting, and both of them had attended the first meeting. The church shared several plans about the sign and the parking lot lighting because of the neighborhood concerns. The church parking

lot needs to be lit so there were shields placed on the parking lot lights to shield the lighting from the neighborhood because of their voiced concerns. The sign company has helped the church to understand that a static message sign could be erected, similar to the existing sign, that could be much larger than the existing sign.

Mr. Henke asked Mr. Feist if he meant the static message sign could be erected now without relief. Mr. Feist answered affirmatively.

Mr. Feist stated the church would like to upgrade their sign and their communication ability. In conversation with the neighbors about the height of the existing sign, the church was not aware of their concerns, the church feels that the smaller monument sign that the neighbors suggested would be more desirable and an efficient approach. The church has worked hard to hear the neighbor's concerns and to try to design a sign that will be agreeable to the majority of the neighbors. The church feels that has been accomplished. The church understands that a few of the neighbors have consistently voiced their opposition, but the other neighbors have not had the consistent opposition particularly four neighbors immediately west of the church and they are the ones that will be most affected by any change made. Mr. Feist stated that he discovered that some people that had signed the petition, that after they visited with him they were more agreeable to the request. Mr. Feist stated that he does not believe that by granting Christ Church a Variance will cause substantial detriment to the public good. He believes it will further serve the public good as the church continues to reach out to the neighbors in mid-town Tulsa with the message of God's love, mercy and grace. Rather than be a blight or cause property decay or decrease property values the church thinks the proposed sign will enhance the neighborhood. The church will use the proposed sign in a positive, inviting and attractive way to impact the community for good. Mr. Feist stated this is a church in a commercial shopping zone with a neighborhood to the west with whom the church has been a good neighbor for 60 years. The church understands the value of the relationship and will continue to do all it can to enhance it. The church thinks it has shown that through this process by its actions.

Mr. Van De Wiele asked Mr. Feist what the church was going to do about the brightness of the church building lights. Mr. Feist stated that the church has taken the lights the have shining up on the building at a 45 degree angle and turned the angle to approximately 20 degrees about a week ago. Last night the light meter measured the light at six to eight foot candles of illumination measured two feet from the building.

Mr. Van De Wiele asked Mr. Feist if the proposed monument had ground lighting shining on it. Mr. Feist stated that it did not.

Mr. Van De Wiele asked Mr. Feist asked what the hours of operation would be for the proposed sign if it were approved. Mr. Feist stated that the sign would be shut off after 10:00 P.M.

Mr. Van De Wiele asked Mr. Feist where he was receiving his information on the brightness of the proposed sign. Mr. Feist stated the sign company had provided the information.

Mr. Tidwell asked Mr. Feist if the lights that shine on the building were left on all night. Mr. Feist answered affirmatively. Mr. Feist stated that he had asked the church trustees if the building lights could be shut off, and he was told the parking lights and the lights shining on the building are on the same circuit. Mr. Feist stated that he was told, also, that security is the primary issue for the lighting of the building because of issues that have happened.

**Interested Parties:**

**Michael Joyce**, 3521 South Columbia Place, Tulsa, OK; stated that the first thing that happened in this meeting today is that the Board approved the Minutes from the April 28<sup>th</sup> meeting, and at that meeting there was an application virtually identical to this application. This Board unanimously denied that application. Unanimously the applicant did not satisfy one requirement of the code, and that application was for the CVS sign. Mr. Joyce stated that he has not heard or seen one shred of testimony that satisfies all three requirements for this Board to grant a Variance under the requirements of the City of Tulsa zoning code. The absence of all three requirements means this Board cannot grant the Variance. During the hearing for CVS he was in attendance as a citizen of Tulsa not as a protestant. Mr. Joyce stated he is concerned about the look of the City, the feel of the City, the degradation of the City, the quality of life and the safety of the City. These signs attack all those issues. Mr. Joyce stated that if the Board grants one they will have to grant them all the same Variance. Mr. Joyce stated that as he looked at today's agenda there is another application for the same Variance so if the Board denies it for CVS and grant it for the church then the Board must grant it for the next case on today's agenda. The zoning attorneys in Tulsa, as they have worked with Staff, has noted that one thing that is critically important for the success of Tulsa is consistency, stability and predictability. Absence of that cause citizens to suffer, business suffer, and future businesses do not want to come to Tulsa. At this point Mr. Joyce had pictures placed on the overhead projector showing Harvard Avenue views looking north and south, and what he believes are hazards. Mr. Joyce stated that the church is a business just like any other business on Harvard, and he does not think the Board wants to open the flood gates for digital signs on Harvard. Mr. Joyce stated that he believes the church building itself is a sign and believes there are two issues to be dealt with. Number one, is code compliance for current signage and number two, a request for an additional sign. Mr. Joyce stated that all the discussion of reducing and changing the lighting is a bunch of light and mirrors dealing with the condition of current code compliance versus evidence that would support a Variance of which there has been none. At this point Mr. Joyce had pictures of 41<sup>st</sup> and Harvard placed on the overhead projector showing the different views of the roadway. Mr. Joyce stated there is nothing different from the church's site other than it is a larger than most churches, and there is nothing in the code that distinguishes between business to business. The business of the church and religion is the same under the code as any other business.

The Board cannot make a decision under the code because a business is a church business versus any other type of business.

Mr. Henke stated the case report states there is no relevant Board history. Mr. Henke stated that he is aware that Mr. Joyce has been before the Board on many different issues. Mr. Henke stated that the Board did deny a sign at the Drug Warehouse and the Board has denied signage of different heights on Harvard. Mr. Joyce stated that he thinks the Board does a fantastic job in reaching the correct decisions in denying Walgreens and denying CVS like they have. Mr. Joyce stated that he is confident that the Board will reach the same and the right decision in this case.

Mr. Henke stated the Board goes back and forth about the precedence set by Board decisions but the Board reviews each application on a case by case basis.

Mr. Joyce stated that Tulsa has become cluttered and ugly. He does not think another sign on Harvard in the middle of all the existing signs is going help pull anything out. Mr. Joyce stated that he does not want to see Tulsa become the next Detroit. This Board is working hard to make things better and he would ask that it not become worse. Mr. Joyce has a picture of the church placed on the overhead projector that showed many logoed church vans in the parking lot and thought the whole church area was one big sign. Mr. Joyce stated that he does not think one more sign or new sign will do anything for the church. Mr. Joyce stated that it is the deeds and the Word that is important, not the signs that are on the church. Mr. Joyce stated the church does not need a digital board because it has continued to grow and thrive for 60 years in the community. Mr. Joyce stated the digital board would be very injurious to the public good, to the neighborhood, to the property values and to the entire City. It is blight.

Mr. Joyce reiterated that the code states that a Variance cannot be granted just because an applicant wants a sign. The code has very restrict requirements for the granting of a Variance. The code provides that upon proper hearing the Board may grant a Variance but the requirements for the findings to allow the Variance are strict. Under Section 1607 of the code it says, "The Board ... may grant a Variance from the terms of this Code as will not cause substantial detriment to the public good or impair the spirit, purposes and intent of the Code, or the Comprehensive Plan, where by reason of exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situation, condition, or circumstance peculiar to a piece of property". To the property. Not business or the mission of the church but to the property. And, "... the literal enforcement of the Code will create an unnecessary hardship." Mr. Joyce stated that he has not heard anything that satisfies that. Mr. Joyce stated the specific requirements that must be satisfied to receive a Variance, and all three of them are one. That 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. The church cannot satisfy number one. Number two, that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district. The entire mile of South Harvard is the same use district and they have the

same issues, the same everything as the church. Number three, that the Variance to be granted will not cause substantial detriment to the public good or impair the purpose, spirit and intent of the Code. Mr. Joyce stated he lives in the neighborhood and hears the fire trucks traveling up and down 36<sup>th</sup> Street, and the intersection of 36<sup>th</sup> and Harvard has countless automobile accidents. The area does not need another distraction that will impair the public safety, let alone another sign or more blight. Mr. Joyce stated that he teaches at Tulsa University, and the students do not want to stay here when they graduate. Businesses do not want to come here when they look at the City because it is ugly. Mr. Joyce respectfully requests the Board deny, unanimously, the application because there is not one criteria in the Code that has been satisfied.

**Lynne Tucker**, 3136 South Florence Place, Tulsa, OK; stated that the comment that Mr. Feist made about the lack of attendance at the meetings does not indicate the number of people that do oppose this request. The petition that was signed with 35 signatures was taken in one or two days. The neighborhood has made their position known to the church. To attend more meetings to hear the church say what they want to do is a waste of everyone's time, when the neighborhood knows they don't want the church to have the new proposed sign. Ms. Tucker respectfully requests the Board to deny this request.

**Jane Haliwell**, 3912 East 33<sup>rd</sup> Street, Tulsa, OK; she has owned this house for 35 years and she just found out this request today because she is in attendance for another application. She requests the Board not set this precedence of a digital sign on Harvard.

**Lois Joyce**, 3432 South Gary Place, Tulsa, OK; stated that she thinks the reason more people do not attend these meetings is because they do not know the rules. They really do not know the consequences of what would happen if this allowed to happen. Ms. Joyce was in an accident on Harvard due to an inattentive driver. Harvard is a very busy street so she requests the Board not allow another distraction.

**Rebuttal:**

Mr. Feist came forward and stated that he does appreciate the concerns of the neighbors. He appreciated the opportunity to meet them and visit about the neighborhood and community. The church wants to continue to be a part of the solution as it has done for the last 60 years to have Tulsa be all that it can be. Mr. Feist stated that the hardship is the fact that they are a church in the middle of a commercial shopping zone. What is unique about the church is that it has a footprint that is one of the largest footprints in the one mile stretch. The church has a setback that allows them to have 50 feet that would enable the church to have sign that many of the other businesses cannot. He knows the neighbors are concerned about a plethora of signs and he knows there aren't going to be many of them because of the setbacks needed. The church is unique in the fact that there is a neighborhood to the west, and this conversation with the neighbors has helped him to understand that the church has been a distraction that can be solved. He is aware that some signs are used in an obnoxious and aggressive manner, but the church would use the proposed sign in a way that is

inviting. The church wants to make a connection with people. Mr. Feist stated the hardship is that the church lives in a changing culture and it has to adapt to be fresh and relevant. It is not automatic that any group or church is going to grow. Any church faces the possibility or prospect of declining membership and Christ Church wants to avoid that. This sign is part of the church's plan to continue to be fresh and current in the community. The church has taken steps to adapt the current lighting situation. The church has changed their plans on advice of the neighbors. The church wants to be a good neighbor while addressing the challenges of the changing culture, and he would ask the Board to grant the Variance request.

**Comments and Questions:**

Ms. Snyder stated that for the same reason she voted against the Utica sign she have to be not in support of this sign. She believes that it does sets a precedence for the future.

Mr. Van De Wiele stated that the blight on Harvard, primarily the utility poles and the signage, from an aesthetic stand point he thinks the proposed smaller ground sign is infinitely better looking than the old dated changeable copy signs. He does not know that he has seen a good enough hardship or a hardship at all other than a desire to keep up with the times.

Mr. Henke stated that there have been a lot of these requests before the Board and some have been approved and some have been denied. Sometimes there have been conditions placed on the ones that have been approved and sometimes the conditions are followed and sometime they are not. This application by the church that is right on Harvard with a residential area right across the street so he cannot support this request.

Mr. Tidwell stated that he could not support this request because of the R District and there is no hardship.

Mr. White stated the Board can approve a Variance given the right circumstances and if the hardship is there. The concept of precedence certainly does apply to some degree but each situation is unique that the Board deals with. The reason there is a public hearing is to allow the uniqueness to be brought out in the open so that everyone can understand what is happening including the Board. He understands the church's position and the Board has heard similar arguments from other churches. In this case the perponderance of the evidence is toward the residential neighborhood so he cannot support this request.

**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 **DENY** the request for a **Variance** to allow an electronic message center within 200 feet of an R District (Section 1221.C.2.c) for failure to establish a hardship; for the following property:

**LT 40 & LTS 1-4 BLK 4 EISENHOWER ADD RSB,EISENHOWER ADD RSB  
L38&39&41-43&W/2L44 ALBERT PIKE SUB, ALBERT PIKE SUB, CITY OF TULSA,  
TULSA COUNTY, STATE OF OKLAHOMA**

**21868—Joel Bein**

**Action Requested:**

Special Exception to permit a food truck court (Use Unit 2) and an outdoor event venue (Use Unit 20) in the CH District (Section 701, Table 1); Variance of the allowable days for open air activities from 179 days to year round (Section 1202.C.1); Variance of the requirement that all motorized vehicles be parked on an all-weather surface (Section 222). **LOCATION:** 418 South Peoria Avenue **(CD 4)**

**Presentation:**

**Joel Bein**, 418 South Peoria Avenue, Tulsa, OK; no formal presentation was made but the applicant was present for any questions.

Mr. White asked Mr. Bein what the results were with the meeting with the church because they were the primary questionable party at the last meeting. Mr. Bein stated that he and the church arrived at an agreement with the parking situation which was the grievance previously.

Mr. White asked Mr. Bein if his operation will be adversely affected by virtue of the agreement. Mr. Bein stated that it would not and he thinks it will work agreeably for everyone.

Mr. White asked Mr. Bein about the all weather surface for the parking. Mr. Bein stated that he hopes the Board will grant the Variance for the parking because the only vehicles to be parked on the gravel surface would be the food trucks.

Mr. White asked Mr. Bein about the driving access to the gravel area proposed for the food truck parking. Mr. Bein stated he would like to install a gate and have the trucks enter from western side.

Mr. Tidwell asked Mr. Bein who owned the property on the west side next to the proposed access. Mr. Bein stated that the church owns that property.

Mr. White asked Mr. Bein if there were any issues with the church concerning the hours of operation. Mr. Bein stated that there were not.

Mr. Henke asked Mr. Bein if the food trucks were going to come and go. Mr. Bein answered affirmatively. Mr. Bein stated the plan is to have some trucks for the lunch shift and different trucks for the dinner shift, while some of them may there for both shifts.



Mr. Henke asked the Board what the hardship for this request would be. Mr. Swiney stated the Code speaks about extraordinary or exceptional conditions or circumstances. Certainly this is a use that has never been tried before in Tulsa so the Board could say that is extraordinary or exceptional so the use itself is extraordinary or exceptional.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

Mr. Henke stated that he is in favor of this request.

Mr. Tidwell stated that he too is in favor of this request, because there needs to be something on the other side of the IDL in the Pearl District. This is a perfect opportunity.

Mr. White stated that realistically speaking this is the ideal geographic location to start off with this concept because of all the development happening downtown and in the Pearl District.

**Board Action:**

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Special Exception to permit a food truck court (Use Unit 2) and an outdoor event venue (Use Unit 20) in the CH District (Section 701, Table 1); Variance of the allowable days for open air activities from 179 days to year round (Section 1202.C.1); Variance of the requirement that all motorized vehicles be parked on an all-weather surface (Section 222), subject to Conceptual Plan 3.7 with potential modifications as shown on the plan submitted today, May 12, 2015. Finding the Special Exception will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. Finding by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the 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, 2, 3, 4 BLK 1, CENTRAL PARK PLACE, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

## **21875—Javier Herrera**

### **Action Requested:**

Special Exception to permit car sales (Use Unit 17) in a CS District (Section 701, Table 1); Variance to permit open air storage and display of merchandise for sale within 300 feet of an adjoining R District (Section 1217.C.2). **LOCATION:** 8310 East 11<sup>th</sup> Street (CD 5)

### **Presentation:**

**James Kachelmeyer**, U. S. Source Control, 5504 East 9<sup>th</sup> Street, Tulsa, OK; stated he is one of the current property owners of the subject property. He was requested by the potential buyer, Javier Herrera, of the subject property to speak on his behalf. The old Route 66 is cherished and that can be seen in all the improvements on 11<sup>th</sup> Street. The City takes a lot of pride in Route 66 and to continue that pride the proposal is similar to the foundation of what founded Route 66 which is the automobile. That is obviously prevalent when driving down 11<sup>th</sup> Street because of the car lots that are on 11<sup>th</sup> Street. Some of them are aged but Mr. Herrera is not asking for another aged car lot. The proposed car lot will be paved with an office and a six foot fence on the rear side of the property. The subject property is next to a city owned lot and he believes the reason the lots have sat dormant is because of the Mingo Valley flood control years ago. The area of 83<sup>rd</sup> and 11<sup>th</sup> Street never receive the sewer system to the properties. This is a prime example of how the ground work can be set to get that changed. His proposal is to run the sewer line to the subject property which will enable other lots that the sewer line passes to have that utility which can only mean improvement. The subject property is currently zoned CS and the request is for a Use Unit 17 to start the progress. Driving down 11<sup>th</sup> Street today looks the same as it did 40 years ago but there are improvements starting to be made on 11<sup>th</sup> Street which is known for car dealers. Before all the car dealers moved to south Tulsa they had businesses on 11<sup>th</sup> Street and there are still many dealers on 11<sup>th</sup> Street today. The request is a positive for infrastructure and will continue the improvements on 11<sup>th</sup> Street. This will be a business that will help define 11<sup>th</sup> Street as it has always been.

Mr. Van De Wiele asked Mr. Kachelmeyer if the residential lot that is south of the subject property is in the drainage creek. Mr. Kachelmeyer did not answer.

Mr. White asked Mr. Kachelmeyer what type of building was proposed for the property. Mr. Kachelmeyer stated the building will be a permanent building or whatever the Board recommends.

Mr. White asked if anyone had met with the neighbors. Mr. Kachelmeyer stated that he had not met any of the neighbors. The property is zoned commercial and separated from the residential area by the creek.

Mr. Tidwell asked Mr. Kachelmeyer how close the neighbor was to the subject property. Mr. Kachelmeyer stated there are no houses other on the rear side.

**Interested Parties:**

**James Highland**, 1310 South 83<sup>rd</sup> East Avenue, Tulsa, OK; stated he counted 41 used car lots in various states of disrepair within a one mile radius of the subject property which is not including one that is being built near Mingo Road. There are two car lots less than 50 yards away from the subject property. The car lots are injurious to the neighborhood. The neighborhood is a high occupancy residential area that has three apartment complexes and one condominium within a quarter mile of the subject lot. A number of the car lots have cars parked on their property with parts sitting on top of the cars. Each car lot has a different kind of fence and they are not maintained. Some of the car dealers are attempting to make an effort, i.e., CarMart, and in most of these businesses the car do not leave. Mr. Highland stated that the applicant proposes to have the entrance to his business on 83<sup>rd</sup> East Avenue, and because of the construction at 11<sup>th</sup> and Memorial cars are cutting through the neighborhood to avoid the construction. There are children and day care businesses in the neighborhood and 12<sup>th</sup> Street and 83<sup>rd</sup> East Avenue each dead end so it will make traffic insane. Mr. Highland stated that he does not live within the 300 foot radius so he was not aware of the application until the sign was erected on the subject property. This request is injurious to his house value.

Mr. Henke asked Mr. Highland when he purchased his house. Mr. Highland stated that he purchased his house in 2004. Mr. Henke stated there were probably 40 car lots in the area then. Mr. Highland stated there were a significant number of them in the area. Mr. Henke stated that he thinks Mr. Highland is making the applicants point that there have been car lots on Route 66. Mr. Highland stated that they are not the same way. A lot of the businesses are converted into car lots. There is a difference between an upholsterer that has been converted into a car lot, or drive shaft business that has been converted into a car lot, or a pawn shop that has been converted into a car lot, or a restaurant that has been converted into a car lot because that is basically what is there. A lot of the car lots were not originally car lots. The old businesses were numerous other businesses that were shut down and converted into car lots. Mr. Highland stated he has a Bachelors in Business Administration and a Bachelors in Science and Economics and he cannot figure why a person would want to build another car lot so close to all the other car lots because it does not make any sense. Apparently there is no code enforcement, and if the Board is going to grant a Special Exception who is going to enforce the rules because no one is doing it now.

Mr. Van De Wiele informed Mr. Highland that he can always file a complaint with Code Enforcement. Mr. Highland stated that he has and nothing has happened because the City does not care. The area is already inundated with car lots and the City does not want to make it any better and he does not want to see another car lot in a high occupancy area, and his entrance should definitely not be on a residential street.

**Steven Hahn**, 8323 East 12<sup>th</sup> Street, Tulsa, OK; stated his parents own the house that is on the south side on the other side of the creek. His father could not attend today's meeting due to health issues so he will be speaking on his behalf. At the last meeting the Board suggested to Mr. Herrerra that he speak with the neighbors. After the

meeting the neighbors were standing in the hallway and as Mr. Herrera was leaving they asked him if he would like to talk to them and he never said one word just kept walking. Mr. Hahn stated that he lives next to his parents and he can sit on his back porch and hear the car lot phone ring from 11<sup>th</sup> and Memorial, and the music that is played.

**Becky Wrighton**, 8338 East 12<sup>th</sup> Street, Tulsa, OK; stated she owns houses located at 8324 and 8336 East 12<sup>th</sup> Street. She grew in a house located 8311 East 15<sup>th</sup> Street and has lived in the residential neighborhood for 40 years. She was not aware of what is proposed until Mr. Highland contacted her. Ms. Wrighton stated she has been away on military duty and she chose to live in Tulsa in this residential neighborhood. A decision in favor would be disheartening and disappointing. She has seen a lot of changes in the neighborhood in the 40 years, because houses have become car lots, restaurants have become car lots, businesses became car lots and they are not nice car lots. She lives on a dead end road, lost one pet and been vandalized three times since the inception of car lots and the changes in the car lots. She was not aware of this case because she was away on military duty, but in placing a phone call to Mr. Highland he brought up the meeting in the conversation. Ms. Wrighton stated that she thought the meeting had cancelled because she had spoken with the owner and made an offer on the property because she did not want to see it become something that is going to continue to devalue the neighborhood. In placing a phone call to INCOG was when she discovered this case truly was on the agenda to be heard. Ms. Wrighton stated that she does not believe city sewer can be taken to the property because of the creek line. Ms. Wrighton stated that she believes if this car lot is allowed to go in on Route 66 it would be shameful.

**Linda Junk**, 8311 East 15<sup>th</sup> Street, Tulsa, OK; stated that to erect another car lot in the area would be sinful and wrong. A lot of the car lots in the area are so run down that she has no idea what type of business they are. This neighborhood needs to be upgraded.

**Judy Shook**, 1237 South 110<sup>th</sup> East Avenue, Tulsa, OK; stated she agrees with all the people that are against this request because the neighborhood does not need another car lot. The one that are there are trashy and detrimental to the neighborhood.

**Rebuttal:**

Mr. Kachelmeyer came forward. He stated that he realizes what the neighborhood concerns are because he owns three different properties on 11<sup>th</sup> Street. The office building will be a new structure, new fence, new gate, etc. The lot has sat empty for about 50 years and it was not bought with the sole purpose of being a neighborhood park.

Mr. Van De Wiele asked Mr. Kachelmeyer if he spoke to City Traffic about the properties curb cut. Mr. Kachelmeyer stated that he did not know if Mr. Herrera had spoke to City Traffic but when 11<sup>th</sup> Street was redone the curb cuts were made on 11<sup>th</sup> Street.

Mr. Henke asked Mr. Kachelmeyer if the curb cut designated as "exit" on page 4.15 was the only curb cut. Mr. Kachelmeyer answered affirmatively.

Mr. Van De Wiele stated that he might be convinced that car lots are normal in the subject area for the Special Exception, but on the Variance which is what is needed to park cars on the lot and have the open air storage he needs to know what is peculiar to that car lot or what the extraordinary circumstance is that would be the basis to show that it would not cause substantial detriment to the public good. Mr. Kachelmeyer stated that he does not think there will be any more traffic no matter what type of business was on the lot, but this is 11<sup>th</sup> Street and this is where the car lots are. This is actually an improvement. The buyer wants to put the sewer in which would hopefully open up the lots next to the subject property. Mr. Van De Wiele stated that the car lots on south Memorial are allowed to be there because they are not within 300 feet of residential area. Mr. Van De Wiele stated that the Board has to find a reason to allow a person to park cars on a car lot within 300 feet of a neighborhood. There has to be something that is unique or exceptional about this piece of property to justify the decision.

**Comments and Questions:**

Mr. Van De Wiele stated that he may be able to grant the Special Exception but he does not see anything unique about this property for a hardship to be able to grant the Variance.

Mr. Henke and Mr. Tidwell agreed with Mr. Van De Wiele.

**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 **DENY** the request for a **Special Exception** to permit car sales (Use Unit 17) in a CS District (Section 701, Table 1); **Variance** to permit open air storage and display of merchandise for sale within 300 feet of an adjoining R District (Section 1217.C.2) for failure to prove lack of injury to the neighborhood and lack of a hardship; for the following property:

**LT 4 LESS BEG SECR TH N162.75 W138.10 S162.75 E138.17 POB BLK 2, FOREST ACRES, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

\* \* \* \* \*

**NEW BUSINESS**

## **21883—Kevin Sikes**

### **Action Requested:**

Variance to allow an electronic message center within 200 feet of an R District (Section 1221.C.2.c). **LOCATION:** 3528 South Sheridan Road (CD 5)

### **Presentation:**

**Kevin Sikes**, 3528 South Sheridan Road, Tulsa, OK; no formal presentation was made but the applicant was available for questions.

Mr. Henke asked Mr. Sikes to state his hardship for the requested Variance. Mr. Sikes stated that there is an existing sign and he would like to update it and try to grow. It is similar to the case that was on Harvard where there 15 signs, he would like to have only the one sign for tenants. The sign is a \$40,000 nice sign that is double sided. He does not understand why people want to hold the City back because the signs that were shown in the Harvard case were from the 1960s and 1970s. The reason businesses do not want to come to Tulsa is because it is stuck in the 1960s and the 1970s. If a person could drive down the road and see only one sign it would be a lot nicer. The sign will only be 180 feet from the residential area. Mr. Sikes stated he is a member of GUTS Church and if the church advertised with a little billboard like the church on Harvard nobody would be able to see it and no one would come to the church.

Mr. Henke stated that the City recognizes that an LED sign is more intense than the standard backlit billboard sign. The rules that apply to those signs are a more strict than the rules that apply to less intense signs. There are different areas of town where certain things are allowed but not allowed in others. The City, by virtue of the Code, does not want to have an intense sign across from a neighborhood because it is not desirable for the neighbors. Mr. Sikes stated that the building he is in is a two-story building. Mr. Henke stated the Board approved a sign located around 58<sup>th</sup> and Lewis but that sign faced Lewis and the neighborhood was in the opposite direction. This Board has cases where a sign will be within 200 feet of property that is zoned residential but it is undevelopable land so it is not practical to hold those applicants to the same standard. Mr. Henke asked Mr. Sikes to state what is unique about his application that would set it apart from the church as an example.

Mr. Van De Wiele asked Mr. Sikes about the existing sign and if it was 30 feet tall as depicted on page 5.9. Mr. Sikes deferred to Mr. Max Steinecker.

**Max Steinecker**, 3508 South Sheridan Road, Tulsa, OK; stated the sign will be for the shopping center and he is one of the tenants in the center. The application states the sign will be 200 feet away from a residential area, but in reality the way it is measured is from the sign to the middle of the road and not actually to the residential area because it is over 200 feet to the residential area. The residential area under discussion is on the west side behind the two-story shopping center where the sign is located. The sign faces will be facing north and south, and not aiming light toward the residential area at all. He does not see how light will reach the residential area or affect them.

Mr. Van De Wiele asked Mr. Steinecker if the entire shopping center was two-story. Mr. Steinecker stated that it was not. Mr. Van De Wiele asked if the north end of the center was two-story. Mr. Steinecker stated that it was not. Mr. Steinecker stated the sign is not taller than the building and will not go over the building. Mr. Van De Wiele asked Mr. Steinecker if the apartments were two-story. Mr. Steinecker stated that some of the apartments were two-story and there trees along the road.

Ms. Snyder asked Mr. Steinecker if he knew the height of his building. Mr. Steinecker stated that he did not, but he knows that if he is behind the building he cannot see the sign over the building. The neighborhood behind the building slopes to the west.

**Interested Parties:**

**Michael Joyce**, 3521 South Columbia Place, Tulsa, OK; stated he feels compelled to be here for this agenda item after speaking his opinion over the CVS application and the church application, both of which were denied appropriately. Mr. Joyce stated the Code is out of date, and the Code is going through revision right now and there has been a lot of feedback from attorneys and councilors. He does not believe in the infinite wisdom and feedback from anyone that the changing the distance required from a residential area and the new revisions to the Code to protect the residents of those areas from the impact of digital signage. The impact does not necessarily require that it is visible, the impact is the total impact. Safety.

Mr. Van De Wiele stated that if the subject property were 400 feet deep from east to west that safety concern is ignored in the Code. Whether it should be or not is irrelevant, but it is. Mr. Joyce stated, with all due respect, those people are coming out of the access point onto Harvard and they could very easily be distracted and be hit. Mr. Van De Wiele stated that he understood.

Mr. Joyce stated the Code states 200 feet and he did not hear a hardship argued. He did not hear anything peculiar to the subject property argued that creates the hardship. He heard perhaps that it was a little lower on the other piece of property and that us the peculiarity to the other piece of property.

Mr. Henke stated that he thinks the applicant's argument was the fact that the sign is completely shielded from the neighborhood, and the topography from his property to the neighborhood was such that it created a buffer or a complete shield.

Mr. Joyce stated that for consistency and for reading of the Code for the safety of the neighborhood he has represented the owner of the apartment complex. The people of the apartments were not notified as a property owner because they are tenants, and he is before the Board speaking on behalf of those that cannot speak or do not have the ability to speak; and, again, for the protection of the entire City and the integrity of the Code.

**Paul Steinecker**, 3508 South Sheridan Road, Tulsa, OK; stated that he is co-owner of the subject property with his son. Mr. Steinecker stated they would like to bring a sign in so all of the tenants could advertise on the one sign and eliminate the tenants erecting a bunch of different signs. He personally abhors the signage issue also. The access to the apartment complex is on the south end of the subject property and it will not be an ingress-egress issue. The driveway that is adjacent to the sign is actually the ingress-egress for business. He and his son have cleaned up the property and would like to be able to have an updated sign for the property.

**Rebuttal:**

Kevin Sikes came forward and stated that the sign will be turned off at late night. This sign will reduce twelve signs into one.

**Comments and Questions:**

Mr. Van De Wiele stated that the building is tall enough to block the sign and the topography is sloping east to west which tends to raise the effective height of the subject building. That intends to mitigate the impact.

Ms. Snyder stated that it is questionable whether the sign is totally blocked from view, again, she does not feel that there is a hardship that will stop any of the other businesses along the street requesting a digital sign. She will not be able to support this request because she thinks it will create multiple digital signs along the street.

Mr. Tidwell stated that he thinks this sign is in a different style than what was presented earlier in today's meeting, because the way the sign is going to face on Sheridan it is not going to interfere with the people that live in the apartment complex behind the two-story portion of the shopping center. He will support this request.

Mr. White stated that the sign structure already exists and what he finds more aesthetically disturbing are all the huge power poles that in place. He can support this request.

Mr. Henke stated the City would look a lot better if the power lines could be buried and have a more uniform clean look. As it was mentioned, the Code is going under a rewrite and the Board is in place for a reason. He does not think this digital sign would be adding to the visual pollution problem. He could support this request.

**Board Action:**

On **MOTION** of **VAN DE WIELE**, the Board voted 4-1-0 (Henke, Tidwell, Van De Wiele, White "aye"; Snyder "nay"; no "abstentions"; none absent) to **APPROVE** the request for a **Variance** to allow an electronic message center within 200 feet of an R District (Section 1221.C.2.c), subject to the location shown on Conceptual Plan 5.9. The Board has found that the subject property and the signage located thereon, with the topography of the property generally sloping from east to west and the height of the building on the property provides an adequate buffer mitigating any impact of the sign being within the 200 foot distance. 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 BK 2, WILMOT ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

**21884—Weldon Bowman**

**Action Requested:**

Modification to a previously approved site plan (BOA-19909) to permit an equipment storage building. **LOCATION:** 2636 East 61<sup>st</sup> Street **(CD 2)**

**Mr. Henke and Mr. Tidwell recused at 3:09 P.M. and left the meeting.**

**Presentation:**

**Weldon Bowman**, 1315 East 15<sup>th</sup> Street, Suite A, Tulsa, OK; stated this modification to a previously approved site plan is for Southern Hills Golf Course. It is for a 700 square foot accessory structure that will be 12 feet tall and cement block. The structure will be approximately 200 feet south of 61<sup>st</sup> Street and approximately 90 feet east of Lewis on the golf course. The building will be a pump house for irrigation system for the golf course.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **VAN DE WIELE**, the Board voted 3-0-2 (Snyder, White, Van De Wiele "aye"; no "nays"; Henke, Tidwell "abstaining"; none absent) to **APPROVE** the request for a Modification to a previously approved site plan (BOA-19909) to permit an equipment storage building, subject to Conceptual Plan 6.15. The Board has found that the modified plan to be compatible with and non-injurious to the surrounding area and meets the previously granted Board relief and meets the zoning requirements per code; for the following property:

**LT 1 LESS N10, MICHAEL'S GLEN RESUB L2-4 OF RESUB L1 PECAN ACRES, PECAN ACRES, PECAN ACRES RESUB L1, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

**Mr. Henke and Mr. Tidwell re-entered the meeting at 3:15 P.M.**

**21885—Courtney Bru**

**Action Requested:**

Appeal of an Administrative Official's decision to issue a zoning clearance permit (#7858) for the subject property. **LOCATION:** 2103 South St. Louis Avenue **(CD 4)**

**Mr. Van De Wiele recused at 3:15 P.M. and left the meeting.**

**Presentation:**

**Courtney Bru**, 2123 South St. Louis Avenue, Tulsa, OK; stated she is actually one of four people that filed an appeal in this case. Ms. Bru submitted photographs and a timeline for display on the overhead projector. Ms. Bru stated that activity on the subject property started last fall and at that time she and her husband had only been in the neighborhood about six months. The neighbors had had some conversations with the property owner and she informed them that she was installing a basketball court. She had some shrubs planted on the property line and earlier this year the neighbors noticed more activity. Ms. Bru stated she went over and spoke with the property owner, and she informed Ms. Bru that she was installing a basketball court. Ms. Bru informed the property owner that she would look into whether a basketball court could be installed where she was placing it. Ms. Bru stated that when she contacted the City about the basketball court they shut down the project and stated they would look into it. Eventually the City did issue a permit for the basketball court or patio. Ms. Bru stated she then filed an appeal and gave direct notice of the appeal to the property owner. The basketball court went on with construction because she could not get the stay enforced. Ms. Bru stated that according to the permit the property owner was granted the permit because 21<sup>st</sup> Street was designated as her front yard but the property owner's front door faces St. Louis Avenue. Code requires a required yard and under certain circumstances the property owner is allowed to choose which area is the front yard. Ms. Bru quoted Section 403.5 in Code about the owner selecting the front yard. The subject property abuts 21<sup>st</sup> Street and South St. Louis. Twenty-first Street has been designated by the City of Tulsa major street plan as an arterial street. Ms. Bru stated that the neighbors feel that the choice to select a front yard was in violation of the Code, it was actually not a choice that the property owner had. Because of the choice the required setbacks and the required yard of the property are misaligned. The neighbors believe that 21<sup>st</sup> Street is not the front yard of the subject property and that South St. Louis is clearly the front yard, that is where the front door faces and how the

property has been used. It is the opinion of the neighbors that South St. Louis is the front yard and if that is the case, the neighbors believe then the basketball court is over the lines because it is not set back far enough according to Table 3, Section 403. The basketball court is currently located 33 feet from the center of St. Louis and should be located 12'-6" plus the 33 feet from the middle of St. Louis making more than half the basketball court over the line. There are no exceptions in the Code to allow this type of use in a required front yard, what the neighbors maintain is the front yard. Ms. Bru stated this is the basic error that is under appeal is the decision to allow the property owner to pick a front yard. The way the property is oriented and the streets that it abuts that option is not available. The permit issued by the City expressly states that the basketball court can be built in the rear or side yard. Ms. Bru stated that the provision that does not allow a property owner to choose between residential and arterial makes a lot of sense in this case because it protects the residential neighborhood.

Mr. Swiney stated that he looked up the definition from the definition section in the Code regarding lot lines. It says, "Lot Line, front, the boundary of a lot which abuts a public street. Where the lot abuts more than one street the owner may select the front lot line."

Ms. Bru stated that is a general definition from the Code, it is intended to supplant the Code anywhere that provision states, but in Section 403 it has its own specific provision when talking about required yards. In that instance, she believes the more specific definition that does not allow a person to choose applies.

Mr. Swiney asked Ms. Bru where in Section 403 she was reading from. Ms. Bru stated she is reading from Section 403, Sub 5. Mr. Swiney stated that Paragraph 5 says, "when a single family or duplex lot abuts a non-arterial street right-of-way on two sides the owner may select the front yard and the other yard abutting the non-arterial shall not have less than 15 feet". The additional clause that appears at the beginning of that portion of the Code, when a single family lot abuts a non-arterial street right-of-way on two sides does not apply in this case because the subject property abuts an arterial and a non-arterial street. Mr. Swiney suggested that the general definition would apply where the lot abuts more than one street. Ms. Bru stated that was an interesting interpretation. She thinks it is very clear in the Code as written, and that is the purpose of the Board to interpret the Code as written. In this situation, required yards, if a single family lot abuts a non-arterial street right-of-way on two sides the property owner can select the front yard, meaning that choice would not be available for the subject property. It is the designation of the required yard that triggered the permit that allowed the basketball court to be built. She does not know the general definition would be applied in this context. Mr. Swiney suggested that because 5 does not apply that it should not be used at all. Mr. Swiney stated that Ms. Bru is suggesting that because the house does not abut a non-arterial street on two sides that the property owner is forbidden to make the selection. Ms. Bru stated that the subject property lot situation is very clearly defined, how this situation should be treated because the Code tells the public exactly how to do it.

**Interested Parties:**

**Lindsey Morehead**, 2117 South St. Louis Avenue, Tulsa, OK; stated she lives immediately adjacent to the subject property. She and her husband purchased their house in 2012 and have been diligently making improvements to the property. When they purchased in Terwilleger Heights they thought the investment would be secure, they never imagined a neighbor would install a basketball court in their front yard. She believes the basketball court is detrimental to her property values, and she asks the Board to uphold the appeal.

**Bobby Klinck**, 2117 South St. Louis Avenue, Tulsa, OK; stated that one of the pleasures he has is improving his home, and he wants his property value to stay up. Now, from his front porch, he sees a basketball court and has balls coming into his yard. Mr. Klinck stated that he hopes the Board will agree with him and the neighbors that St. Louis is the front yard.

**Jane Halliwell**, 2235 South Rockford, Tulsa, OK; stated she lives about 1-1/2 blocks away from the subject property and she has been there since 1949. The address of the subject property is 2103 South St. Louis. She is surprised that anyone would think the front yard of the subject property faces 21<sup>st</sup> Street. The house is oriented toward South St. Louis. The basketball court is huge and she would not want it next door to her house.

Mr. Swiney stated that a patio is allowed in the front yard so if in fact it is determined that 21<sup>st</sup> Street is the front yard, a patio can still be poured.

**Bob Kolibas**, City of Tulsa, 175 East 2<sup>nd</sup> Street, Tulsa, OK; stated he originally reviewed this as a zoning clearance application. When he did some research he discovered the house had been built in 1923 which put it in a non-conforming status. He also found that any of the setbacks complied with the Zoning Code today and are being used currently. Because the house abuts an arterial on one side and a non-arterial on the other side it gives the owner the opportunity to chose the front from either side. He then contacted the owner and asked which side was used as the front yard, and the property owner stated it was 21<sup>st</sup> Street.

Mr. Henke asked Mr. Kolibas, which based upon his interpretation of the Code as he understands it, the property owner was entitled to the election and the home owner chose to elect 21<sup>st</sup> Street as their front yard. Mr. Kolibas answered affirmatively.

Ms. Snyder asked Mr. Kolibas what the property owner asked for on the permit application. Mr. Kolibas stated the property owner asked for a concrete patio.

**Yuen Ho**, City of Tulsa, Building Official, 175 East 2<sup>nd</sup> Street, Tulsa, OK; stated that when Table 403 is reviewed it talks about the bulk and area requirements for residential districts. The bulk and area requirements are modified as follows, "when a single family or duplex lot abuts a non-arterial street right-of-way on two sides the owner may select

the front yard." Then it says how the setback is modified and you will find that it is more than 15 feet.

**Tracy Wheatley**, 2103 South St. Louis Avenue, Tulsa, OK; stated she is the property owner of the subject property. Ms. Wheatley had photographs placed on the overhead projector to show the orientation of her house with a sidewalk leading from 21<sup>st</sup> Street to the front door of the house. All the houses in the neighborhood have their sidewalks lead to their front door including her house. Ms. Wheatley had pictures placed on the overhead projector showing the trees that she had planted last fall that had been under discussion. Ms. Wheatley stated that she has never said the area under discussion is a basketball court, it is a multi-purpose patio. Ms. Wheatley stated that when she was planting the trees she met Ms. Morehead and she had no objection to the patio but did object to the trees because they blocked her view to 21<sup>st</sup> Street. Ms. Wheatley stated that the neighbors have played bocce ball in the past and she has had those balls come into her yard which she didn't care.

Mr. Henke asked Ms. Wheatley what the total square footage of the added patio is. Ms. Wheatley stated that it is a 15'-0" x 30'-0" area, but she is not sure.

Ms. Wheatley had additional pictures placed on the overhead projector showing a proposed fence that will be a little over four feet in height. Mr. Henke informed Ms. Wheatley that she is not allowed to have a fence in excess of four feet in the front yard.

Ms. Wheatley had a picture placed on the overhead projector that showed the patio coming off the back of the house not the back porch.

Mr. Tidwell asked Ms. Wheatley where the proposed fence would be installed. Ms. Wheatley stated that the fence would be installed close to the property line. Ms. Wheatley stated that in everything she has planned or done she had called the City.

**John Patton**, 5809 South Richmond, Tulsa, OK; stated he was the original applicant for this request and spoke to Mr. Paul Enix of the City. The definition for defining a front lot the definition clearly says it abuts two streets. Mr. Enix and he discussed where the front of the subject house is and it was determined where the driveway and sidewalk is located. It has never been to the side of the house. Looking at the aerial photos the house would be in violation of the setbacks according to the current Code. When the house was built 21<sup>st</sup> Street was a two-lane road. The house is non-conforming and everything that has been done has been taken to the City. The neighbor's biggest complaint seems to be the trees because they have used that part of the yard for their parties.

**J. W. Custer**, 2123 South St. Louis Avenue, Tulsa, OK; stated the general definition of a lot line is that Section 403.A.5 limits that definition. The general definition of a lot line gives a person the right to pick a street if the house abuts two streets. Section 403 limits that general definition, and in this particular instance it limits the decision making ability because of 21<sup>st</sup> Street. Then it comes down to determining what the front yard is

and it seems there is ample evidence that the address of 2103 St. Louis determines the front yard should be on St. Louis.

**Rebuttal:**

**Courtney Bru** came forward and stated that Mr. Swiney stated a patio is allowed in the front yard, not necessarily the required front yard. The poured area is really big, really big. She cannot imagine how it does not affect the Morehead's property value, and she suspects it impacts her property value. The neighbors love their neighborhood and take care of their houses.

**Yuen Ho** came forward and stated that in the discussion of Section 403.A.5, the setback from a non-arterial street is 30 feet. The utility of this modification is that in this scenario a person can pick which is the front yard or the front lot line. This case is not where Section 403.A.5 provision would be applied.

**Courtney Bru** came forward and stated that Table 3 stipulates that you add the distance designated which is 30 feet for RS-2 to one half of the right-of-way of the abutting street, or 25 feet if the street is not designated on the major street plan. She thinks that would be 30 feet plus 12.5 feet for the setback.

Mark Swiney stated that Ms. Wheatley did not need a permit to pour a patio, because a patio can be poured without a permit. A patio can be poured in any yard; a front yard or a side yard. When the disagreement among the neighbors arose, Ms. Wheatley or her agent applied for a Zoning Clearance Permit. The Zoning Clearance Permit is essentially a statement that the Zoning Code is not being violated by the installation of the subject patio. Mr. Swiney asked the Board to look at Section 210 of the Zoning Code that refers to front yards. As Ms. Bru mentioned, there is a general rule that the yard must be open and unobstructed from the ground to the sky. There is also another section that speaks about permitted obstructions, and Paragraph 6 says swimming pools, tennis courts, and fallout shelters except in required front yards. Obviously the Zoning Code recognizes the need for something like a tennis court which is close to this request. Also, Paragraph 8 says customary accessory structures, such as clotheslines, barbecue pits, and playground equipment, are also allowed. If the basketball hoop is considered to be playground equipment that also is recognized by the Zoning Code, and the City does not regulate playground equipment.

**Comments and Questions:**

Ms. Snyder stated that she believes the City allowed Ms. Wheatley to pick her front yard because of the Zoning Code wording, so the City is not in error.

Mr. Tidwell stated that he believes Ms. Wheatley had the right to choose her front yard and she chose 21<sup>st</sup> Street.

Mr. White stated that there have been several applications have come before the Board regarding this same issue, but the Code stipulates the end result. Mr. Swiney has

presented the interpretation, as he sees it in the Code, so he will need to deny the appeal.

**Board Action:**

On **MOTION** of **WHITE**, the Board voted 4-0-1 (Henke, Snyder, Tidwell, White "aye"; no "nays"; Van De Wiele "abstaining"; none absent) to **DENY** the request for an Appeal of an Administrative Official's decision to issue a zoning clearance permit (#7858) for the subject property finding the City was not in error; for the following property:

**LT 10 BK 1, TERWILLEGER HGTS, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

**Mr. Van De Wiele re-entered the meeting at 4:02 P.M.**

**21887—Paul Hames**

**Action Requested:**

Variance of the all-weather surface material requirement for temporary off-street parking (Section 1303.D & Section 1304.C). **LOCATION:** 1111 West 17<sup>th</sup> Street (CD 2)

**Presentation:**

**Paul Hames**, Dewberry, Inc., 1350 South Boulder Avenue, Suite 600, Tulsa, OK; stated his firm is a consultant for the OSU Board of Regents. Today's request relates to a construction plan for a new academic building and a parking garage on the OSU campus. Mr. Hames had a picture placed on the overhead projector to show the existing layout of the project. He is asking that an all-weather surface not be put on the aggregate parking lot because of it's temporary nature which will be approximately 18 months.

Mr. Henke asked Mr. Swiney about the time limitation that was mentioned. Mr. Swiney stated the Board can state a condition that under ordinary circumstances would be a time limit and the condition would expire that is available.

**Interested Parties:**

**Eric Pollock**, Vice President of Administration and Finance for the OSU Center for Health Sciences, 1111 West 17<sup>th</sup> Street, Tulsa, OK; stated the subject area is a green space for the campus currently. In the construction contracts it states that the temporary parking is to be removed at the end of the project. This is a green space that is needed on campus and it will be brought back.

Mr. Van De Wiele asked Mr. Pollock if this is approved it would be subject to the occupancy of what. Mr. Pollock stated there is a question as to whether the parking garage will be able to be occupied prior to the completion of the building, because of the

way they are tied together. If the garage can be utilized prior to completion of the building then the people will start using the parking garage as soon as possible.

Mr. White asked Mr. Pollock what events have to be finished before the garage can be occupied. Mr. Pollock stated that the parking garage has to be able to be occupied then the deconstruction of the temporary parking lot can be started.

**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 all-weather surface material requirement for temporary off-street parking (Section 1303.D & Section 1304.C) to permit a temporary off-street parking area consisting of aggregate base material, subject to Conceptual Plan 8.12 showing the area the Variance as the proposed temporary parking for 117 spaces. Provided further that such Variance shall be effective only until the proposed garage as shown on page 8.12 with 401 spaces is issued a Certificate of Occupancy or similar document allowing the use thereof. Finding that the temporary nature of the parking area to be an exceptional condition or circumstance which is 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 5 & N35 VAC ST ADJ ON S BETWEEN RR R/W & JACKSON AVE,  
RIVERVIEW PARK SECOND ADDN RESUB, WEST TULSA ADDN, CITY OF TULSA,  
TULSA COUNTY, STATE OF OKLAHOMA**

**Mr. Tidwell left the meeting at 4:11 P.M.**

**21889—Tanner Consulting, LLC**

**Action Requested:**

Special Exception to permit Use Unit 15 (other trades & services), Use Unit 16 (mini-storage) and Use Unit 17 (automotive & allied activities) in a CS District (Section 701). **LOCATION:** 10880 East 11<sup>th</sup> Street **(CD 5)**

**Mr. Tidwell re-entered the meeting at 4:14 P.M.**



**Presentation:**

**Ricky Jones**, Tanner Consulting, 5323 South Lewis Avenue, Tulsa, OK; stated he represents the purchaser and developer of the subject property that is located on the south side of East 11<sup>th</sup> Street. The property is currently zoned CS and the applicant is proposing to purchase the property and construct a commercial several buildings as depicted on the conceptual site plan in the Board's agenda packet. It will be very similar to the existing uses in the surrounding area. The size of the tract does not suit itself for retail use because of the depth, because as you get deeper into a commercial tract it is harder to rent for straight retail uses. Mr. Jones presented an exhibit of the surrounding area noting the different uses 15, 16 and 17; and there are Use Unit 19 uses in the area. The applicant is not requesting any Variances so anything that is planned would fit into the CS zoned district. Mr. Jones stated that he spoke to the owners of the mobile home park and they are in agreement with the applicant's request. He has also spoke to two or three other interested parties that received notice and they are in agreement. The site plan is conceptual at this time leaving the north two buildings for retail uses, and the southern building could be used for an electricians office or an irrigation office where there might be storage involved on the inside. The property that is located to the west is almost the exact same use. In the application Mr. Jones stated he tried to exclude the uses that would not be appropriate, i.e., a kennel. Mr. Jones stated that delveoper does not know exactly the uses to go into the area so he cannot ask for specific uses, and it is hard to get a construction loan if the Board were not support the Use Unit 15, 16 or 17 uses. That is why the application is before the Board before the property is purchased.

Mr. Van De Wiele stated there was a similar case before the Board. Ms. Miller stated that what she remembered about that case was that the Board continued the case until the applicant could decide the uses for the property. Mr. Van De Wiele stated it makes it difficult if the Board does not know what is planned to be done on a piece of property. He thought the outcome of the previous case was that the Board couldn't or wouldn't give a blanket approval. Ms. Miller stated that is correct, and that applicant ended up selecting some uses.

Mr. Jones stated that is what he attempted to do by excluding the uses that would not be appropriate, but at the same time the request was written so it would have as broad a latitude as possible. He thinks the way the property is shaped, and the overall depth, those back buildings will be hard to lease for retail uses so they set themselves up better for some other Use Unit 15 use.

Mr. Van De Wiele asked if there was an example of what the Use Unit 15s and Use Unit 16s are. Mr. Swiney stated that the definition of Special Exception says, "...a use or design element of a use which is not permitted by right because of the potential adverse effect." Mr. Swiney stated that in a case as this he wonders how the Board can determine what the potential adverse effect is if they do not know what the use might be.

Mr. White stated that he understands Mr. Jones problem, and the Board has always had this problem in dealing with blanket approvals without specifics. Mr. Jones stated the applicant did go through the exercise of looking at the uses and he does not think a dry cleaner would be inappropriate the subject location. He and his client have gone through the list and tried to identify the uses that would be inappropriate and they were excluded.

Mr. Henke asked Mr. Jones if he had met with the neighbors. Mr. Jones stated that he has not.

**Interested Parties:**

There were 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 permit Use Unit 15 (other trades & services), Use Unit 16 (mini-storage) and Use Unit 17 (automotive & allied activities) in a CS District (Section 701) to the Board of Adjustment meeting on May 26, 2015; for the following property:

**E/2 LT 1 & N20 VAC ST ADJ ON S LESS N40 FOR ST THEREOF, MINGO VALLEY ACREAGE, OAKBROOK VILLAGE, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

**21890—Kevin Coutant**

**Action Requested:**

**Modification** to a previously approved site plan (BOA-17795) to permit expansion of an electric substation. **LOCATION:** 9512 South Canton Avenue (**CD 8**)

**Mr. Henke and Mr. Tidwell recused and left the meeting @ 4:22 P.M.**

**Presentation:**

**Kevin Coutant**, 2 West 2<sup>nd</sup> Street, Suite #700, Tulsa, OK; stated he represents Public Service Company of Oklahoma/AEP. The subject property is owned by PSO that lies on the northern boundary line of the Creek Turnpike, the western boundary is Yale Avenue, and the eastern boundary is Canton. This property was approved for a Special Exception in 1997 to construct a substation for PSO. At that time the site plan showed a configuration of two transformers that will be a part of the substation for the growing part of the community and it has grown more since. The configuration that is shown on

the 1997 approved site plan does not work anymore because of improved technology, so there is today's request for a modification to the approved site plan for second transformer. The subject property is adjacent to an exit ramp of the Creek Turnpike on the south and there is a regulatory flood plain that runs across the northerly property line. There are two houses across Canton that are adjacent to the subject property, and one residence adjacent on the northern side which the house is on 93<sup>rd</sup> Street. The substation sits down in a bowl due to the topography so it is not viewable for the most part. The substation was positioned along existing transmission lines so there is no need for additional infrastructure that would be disruptive to the community. The site plan has been modified to expand the area within which the substation would be located by stretching it 65 feet to the west. Mr. Coutant had pictures placed on the overhead projector showing the subject property.

Mr. White asked Mr. Coutant if the addition would be the same elevation as the existing substation. Mr. Coutant answered affirmatively.

Mr. Coutant stated that because of demands on the system it is time to add to the capability of the substation. The second transformer is the solution. The requirement for the addition is service based because of the new technology and the growth of the area.

Mr. Van De Wiele asked Mr. Coutant if, other than the expansion area, if PSO intended to leave foliage and trees. Mr. Coutant answered affirmatively, but stated there is to be a conversation this afternoon regarding the foliage. PSO is in the process of notifying the neighbors stating there will be trimming around the lines because of the substation modification. It was learned last week that one of the neighbors has concerns about the foliage that has developed along a common property line on the property. There has been a good discussion regarding that and PSO has committed to do what is necessary to clean up the property line.

#### **Interested Parties:**

**Jim Barnes**, 5110 East 93<sup>rd</sup> Street, Tulsa, OK; stated he is a concerned neighbor because his property abuts the subject property. He was before the Board 17 years ago opposing this substation. In the agreement that the Board made with the applicant, it was agreed that there would be trees planted along their north boundary line to enhance the looks of the substation. The foliage that is on their north property line, his south property line, has grown eight feet into his property and it is all poison ivy. Neither the trees nor the fence can be found because of it. Mr. Barnes had pictures placed on the overhead projector showing the foliage under discussion. Mr. Barnes stated that he is tired of called PSO and asking them to maintain the fence that can no longer be seen; they say they will do something but never do. Ms. Julie Grant and he went to the substation site and she picked up a case of empty beer containers inside the fence, and she stated they would have a light installed. Since the substation has been installed he has had two break-ins on his property and he does not live in a high crime area, and he attributes to the people that go up to the substation to do whatever they want. The area is not well patrolled and the neighbors across the street that Mr. Coutant referred to are

also concerned. He would request any modification be denied until PSO can show the neighbors that they are going to take care of the property which is something they haven't done in 17 years.

**Rebuttal:**

Kevin Coutant came forward and stated that Canton Street is a dead end street, and things happen. His client is committed to cleaning up the fence line and wants to be a good neighbor. He will be glad to give Mr. Barnes a good telephone number for any problems so there will not be any more communication issues. Mr. Coutant stated this is a complex issue because the taking out of the overgrown foliage will display the substation more than it did previously.

Mr. Barnes stated that PSO did plant trees but they are completely overgrown with the vines, and they have never maintained his side of the property but they do maintain the turnpike side of the property. His phone calls have been about this situation and he ends up transferred to an office somewhere in the Northeast part of the United States. The barbed wire fence cannot be seen because of the overgrowth, and he is not going to start cutting their foliage because it is poison ivy. Mr. Coutant stated the property is scheduled to be sprayed today.

**Comments and Questions:**

Mr. Van De Wiele stated that this request sounds like a necessary improvement but he thinks a compliance with the spirit of the prior approval needs to be required and warranted.

Ms. Snyder stated that she agrees with Mr. Van De Wiele and that PSO needs to maintain the fence line.

**Board Action:**

On **MOTION** of **VAN DE WIELE**, the Board voted 3-0-2 (Snyder, Van De Wiele, White "aye"; no "nays"; Henke, Tidwell "abstaining"; none absent) to **APPROVE** the request for a **Modification** to a previously approved site plan (BOA-17795) to permit expansion of an electric substation, subject to Conceptual site plan on 10.13 as further described and depicted in the isometric design on page 7 as a conceptual plan on the documents submitted by the applicant today. This approval is subject to the prior conditions of the previous approval, as follows:

- subject to Storm Water Management approval
- subject to the improvements per the alternative site plan
- subject to the landscaping per the alternative site plan
- subject to the landscaping and screening requirements

specifically that the applicant will cause the general clean up of the eastern half of the northern property line of the subject property removing the overgrowth on the common property line. Finding that the modifications are compatible with and non-injurious to the surrounding area and meet the previously granted Board relief or zoning requirements per Code; for the following property:

**N462 S792 W/2 SW NW & N462 S792 W423.15 E/2 SW NW LESS E25 & LESS BEG 330N SWC SW NW TH E1084.47 N193.65 NW131.57 NW813.85 NW128.59 W131.17 S462 POB SEC 22 18 13 3.172ACS, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

**Mr. Henke and Mr. Tidwell re-entered the meeting at 4:47 P.M.**

**21891—Lou Reynolds**

**Action Requested:**

Variance to reduce the rear yard setback from 25 feet to 10 feet in an RS-1 District (Section 403). **LOCATION:** 7258 South Evanston Avenue **(CD 2)**

**Presentation:**

**Lou Reynolds**, 2727 East 21<sup>st</sup> Street, Tulsa, OK; stated he represents the property owners. This is an unusual corner lot that is on the northwest corner of Evanston and South 73<sup>rd</sup>. There is a 35 foot setback on what would be appear to be the front of the house on 73<sup>rd</sup> but that front door enters the basement of this house. Mr. Reynolds had pictures displayed on the overhead projector to show this and the position of the house on the subject property. Mr. Reynolds stated the true front of the house faces Evanston, and that is the address, but by using the drive a person would enter the back door of the house and feels that way. The owners would like to add a decorative touch to make it look like a front entry with a front approach off Evanston to go with the real front door. The house was built in the flat part of the hill in 2008 and the current owners have owned it for a couple of years. The hardship in this is the topography because most of the property is a hill which drops about 20 feet and the odd shape of the lot.

Mr. White asked Mr. Reynolds about the easement encroachment. Mr. Reynolds stated that it is his understanding that it has been vacated, and he was furnished with court document copies to show that it had been vacated.

**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 to reduce the rear yard setback from 25 feet to 10 feet in an RS-1 District (Section 403), subject to Conceptual Plans 11.15 and 11.16. The Board has found that due to the odd shape of the lot and it being on a corner that these

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 1, ROCKWOOD HILLS MANOR 2ND ADDN RESUB L1 B2, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

**21892—Acura Neon Signs – Yoko Lam**

**Action Requested:**

Variance to increase the height of a ground sign from 20'-0" to 93'-6" in an R District (Section 402.B.4). **LOCATION:** 7355 East Easton Street **(CD 3)**

**Presentation:**

**Peter Janzen**, Acura Neon Signs, 1801 North Willow Avenue, Broken Arrow, OK; stated this is a highly unusual case. His firm was approached by Admiral Twin Drive-In Theatre which is located in a residential neighborhood and have been for years. Several years the original wooden screen burned down and it was replaced with an aluminum structure. Essentially the entire structure is being classified as a ground sign. The owner has an opportunity to repurpose the River Walk Theatre letters with a couple of more letters being fabricated. The drive-in is located on a downward slope and you can tell the function of the structure but there is no signage indicating what they are. This sign is not internally illuminated and it will not face the neighborhood and it will only be on the south side.

**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 to increase the height of a ground sign from 20'-0" to 93'-6" in an R District (Section 402.B.4), subject to Conceptual Plan 12.8. The Board has found that the structure to which the letters or signage to be attached is an existing drive-in movie theatre screen which is certainly unique and exceptional to Tulsa. 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:

**S/2 SW SE & S125 OF N/2 SW SE SEC 35 20 13 TR IN CITY LESS W20 EACH TR FOR ST, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

\* \* \* \* \*

**NEW BUSINESS**

None.

\* \* \* \* \*

**BOARD MEMBER COMMENTS**

Ms. Snyder stated that she feels like today a lot of people really beat up on the City of Tulsa, and she thinks it is the prettiest place in the world.

\* \* \* \* \*

There being no further business, the meeting adjourned at 5:03 p.m.

Date approved: \_\_\_\_\_



Chair