

BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1159
Tuesday, April 12, 2016, 1:00 p.m.
Tulsa City Council Chambers
One Technology Center
175 East 2nd Street

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	OTHERS PRESENT
Henke, Chair Flanagan Snyder Van De Wiele White, Vice Chair		Miller Moye Sparger	Swiney, Legal Blank, Legal

The notice and agenda of said meeting were posted in the City Clerk’s office, City Hall, on Thursday, April 7, 2016, at 9:38 a.m., as well as at the Office of INCOG, 2 West Second Street, Suite 800.

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

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

MINUTES

On **MOTION** of **WHITE**, the Board voted 4-0-1 (Henke, Flanagan, Van De Wiele, White "aye"; no "nays"; Snyder "abstains"; none absent) to **APPROVE** the **Minutes** of the March 22, 2016 Board of Adjustment meeting (No. 1158).

UNFINISHED BUSINESS

22042—Eller & Detrich – Lou Reynolds

Action Requested:

Special Exception to permit a school use in the RM-2 District (Section 5.020-C).

LOCATION: 301 East Jasper Street North (CD 1)

Presentation:

Mr. Reynolds was not present. The Board has moved this item to the end of the agenda.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

No Board action required at this time.

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NEW APPLICATIONS

22047—Jason Gibson

Action Requested:

Special Exception to permit horizontal and vertical extensions to a nonconforming exterior wall (Section 80.030-D); Variance to allow a two-story detached accessory building; Variance to allow a detached accessory building that exceeds 18 feet in height and exceeds 10 feet at the top of the top plate (Section 90.090-C2.a.1).

LOCATION: 1219 East 26th Street (CD 4)

Presentation:

Bailey Austin, Austin Bean Design Studio, 409 East 8th Street, Tulsa, OK; stated the owner would like to add on to an existing two car garage. The existing garage does not accommodate modern vehicles because it is too shallow and not wide enough. The owner would like to extend the portion facing the driveway to accommodate two vehicles and they would also like to add a second story to the garage. Ms. Bailey presented pictures on the overhead screen showing similar garages near the subject property.

Mr. Henke asked Ms. Austin how the property owner planned to use the second story of the garage. Ms. Austin stated the property owner's plans were to use it for storage and an outdoor office space. Ms. Austin stated there will not be a bathroom on the second story.

Mr. White asked Ms. Austin if there were plans to use the second story as living quarters. Ms. Austin stated that it will not be living quarters.

Mr. Henke asked Ms. Austin when the original garage was built. Ms. Austin stated that she believed it was built in the 1920s.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Flanagan, Snyder, Van De Wiele, White “aye”; no “nays”; no “abstentions”; none absent) to **APPROVE** the request for a Special Exception to permit horizontal and vertical extensions to a nonconforming exterior wall (Section 80.030-D); Variance to allow a two-story detached accessory building; Variance to allow a detached accessory building that exceeds 18 feet in height and exceeds 10 feet at the top of the top plate (Section 90.090-C2.a.1). The hardship being this is an extension of the existing walls and in many of the cases there are numerous two-story structures of detached buildings in the immediate neighborhood. The height increase requested does not exceed that of other detached structures that have been approved in the area. This approval will be per plans 3.14, 3.15, 3.16, 3.17 and 3.18. 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 in the Variances the Board determines that the following facts, favorable to the property owner, have been established:

- a. That the physical surroundings, shape, or topographical conditions of the subject property would result in unnecessary hardships or practical difficulties for the property owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;
- b. That literal enforcement of the subject zoning code provision is not necessary to achieve the provision’s intended purpose;
- c. That the conditions leading to the need of the requested variance are unique to the subject property and not applicable, generally, to other property within the same zoning classification;
- d. That the alleged practical difficulty or unnecessary hardship was not created or self-imposed by the current property owner;
- e. That the variance to be granted is the minimum variance that will afford relief;
- f. That the variance to be granted will not alter the essential character of the neighborhood in which the subject property is located, nor substantially or permanently impair use or development of adjacent property; and
- g. That the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of this zoning code or the comprehensive plan; for the following property:

PRT LT 13 BEG SECR W15 N TO PT ON NL E16.8 S134.85 POB & ALL LT 14 BLK 10, SUNSET TERRACE, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

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UNFINISHED BUSINESS

22042—Eller & Detrich – Lou Reynolds

Action Requested:

Special Exception to permit a school use in the RM-2 District (Section 5.020-C).

LOCATION: 301 East Jasper Street North (CD 1)

Mr. Henke recused and left the meeting at 1:13 P.M.

Presentation:

Lou Reynolds, Eller & Detrich, 2727 East 21st Street, Tulsa, OK; stated he represents the Drexel Academy and this request to allow the operation of a school on the subject property for two years and six months. Mr. Reynolds had a zoning map placed on the overhead projector and discussed the surrounding zoning and the subject property's zoning. The property has been vacant for several years and is owned by the University of Tulsa Center Authority. The Drexel Academy has leased the property and this will be a temporary location while Drexel Academy looks for a permanent location. Mr. Reynolds presented a new site plan and had it placed on the overhead projector. The original buildings that Drexel Academy intended to purchase have been sold but the new site plan is similar to the original site plan. Mr. Reynolds had a new building plan placed on the overhead projector and stated that the facility will be totally fenced in. There is a designated place for the parents to drop off and pick up their children. Drexel Academy is a non-profit charter school and they are focused on underserved neighborhoods and the subject property is in the center of their area. Drexel Academy is authorized by Oklahoma State University, the Oklahoma State Board of Regents sponsors the school, and the Oklahoma State College of Education provides their governments. Commencing on August 1, 2016 Drexel Academy will operate three grades, K-2 which will have 15 students in each grade. Next year on August 1, 2017 Drexel Academy will operate four grades, K-3 with 15 students in each grade. There will not be more than 60 children in attendance and they will attend school 11 months out of the year. The typical day is 7:30 A.M. to 5:00 P.M. for ten months; then in June the day will be from 9:00 A.M. to 3:00 P.M., and the students will take July off. This will not be injurious to the neighborhood and behalf of Drexel Academy he would request the Board approve the Special Exception per the conceptual site plan for two years and six months.

Mr. Van De Wiele asked staff about the e-mail from Julie Miner regarding the zoning and the land use issue. Ms. Miner is raising concerns about the buildings being trailers

and Mr. Van De Wiele asked if that was accurate. Mr. Reynolds stated they are not trailers, they are temporary buildings. They will be dressed up in a nice way and skirted. The buildings will be there temporarily only and they are very appropriate for the area. There is no one around the subject property and Mr. Reynolds believes the complaint saying the buildings are trailers is a mischaracterization.

Mr. White asked Mr. Reynolds about how this will affect the other educational facilities in the area and will this interfere with their development plans. Mr. Reynolds stated that he cannot imagine this will interfere because Drexel Academy has leased the property from the University Center Authority which is a public authority. This has been through all the City processes and no one has come forward to lease the subject property.

Mr. Snyder asked Mr. Reynolds how long the lease is for the subject property. Mr. Reynolds stated that lease is for one year with three one year options.

Ms. Moyer stated that the application was noticed to the property owners within 300 feet and to date she has not received any comments from any of the neighboring property owners, other than the comment this is included in the Board's agenda packet. In terms of the temporary buildings and the City of Tulsa has stated that the temporary buildings will be allowed.

Ms. Miller stated the Ms. Julie Miner had a meeting to attend or she would have been in attendance today. It is Ms. Miller's understanding that the TDA had meetings to work on the renderings of the buildings and their appearance and today's submittal looks totally different than what was originally submitted which is a concern for her.

Mr. Van De Wiele asked Ms. Miller if her concern was that it is going from better to worse. Ms. Miller stated that her concern is that the process this went through before it reached INCOG possibly did not see what was submitted to the Board today. Ms. Miller stated that Ms. Miner had commented on the rendering that is in the Board's agenda packet and Ms. Miller stated that she has seen iterations of today's submittal and saw how it evolved over time aesthetically, and now it looks like it took a few steps backward with a stripped down look of what was submitted today. Ms. Miller stated this is a concern given all the improvements made in Emerson School and the other things happening in the area.

Mr. Reynolds stated that Drexel Academy will be on the subject property for two years and six months only. The buildings that were presented in the Board's agenda packet were lost because another party paid a higher price for them than Drexel did after a hand shake and an agreement.

Ms. Snyder asked Mr. Reynolds if the plans are to remove the buildings after the two years and six months. Mr. Reynolds 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 4-0-1 (Flanagan, Snyder, Van De Wiele, White “aye”; no “nays”; Henke “abstaining”; none absent) to **APPROVE** the request for a Special Exception to permit a school use in the RM-2 District (Section 5.020-C), subject to the conceptual plan submitted today, April 12, 2016. The Special Exception approval will expire two years and six months from today’s date. This approval is with the further understanding that the buildings to be located on the subject property will be removed within three months after the expiration of the two years and six month period. 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:

LTS 1 - 24 LESS BEG SWC LT 13 TH N18 SELY TO A PT ON SL LT 13 TH W12 POB & LESS BEG NWC LT 12 TH S77.07 TO PT ON NL W8.56 POB BLK 1 & E38 LT 4 & ALL LTS 5 THRU 9 & W5 LT 10 BLK 1 RAMONA ADDN & ALL VAC STREETS ADJ THERETO & LESS BEG 18 N SWC LT 13 TH, SUNSET HILL ADDN, RAMONA ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

Mr. Henke re-entered the meeting at 1:24 P.M.

NEW APPLICATIONS

22048—Don Oltman

Action Requested:

Variance to reduce the minimum lot width from 60 feet to 50 feet to permit a duplex, per lot, in the RM-2 District (Section 5.030-A). **LOCATION:** N of NW/c of South Newport Avenue & East 61st Street (CD 9)

Presentation:

Marilyn Oltman, Oltman Homes, Inc., P. O. Box 713, Jenks, OK; stated she has purchased nine lots and six of the lots have duplexes on them that her firm built. Those six duplexes were sold and the lady that purchased them reserved the right to purchase the three subject lots. During this process it was discovered that a Variance is now needed to be able to build duplicate duplexes.

Mr. Van De Wiele asked Ms. Oltman what was on the lots previously. Ms. Oltman stated that there was nothing on the lots and as far as she knows nothing had ever been built on them.

Mr. Van De Wiele asked staff if the duplexes could have been built on the 50 foot lots before the new zoning code went into effect. Ms. Moye stated that even in the previous code the minimum lot width for duplexes was 60 feet. Ms. Oltman disagreed with Ms. Moye because she stated there was no Variance required to build the six existing duplexes.

Ms. Miller stated that the same rule applied. She does not know what other conditions may have surrounded the property but that provision in the Code has remained the same. Ms. Moye stated that she had checked the lots immediately to the west of the existing duplexes and they did not go through Board approval for the required Variances.

Ms. Miller asked Ms. Moye about the RM-2 zoning on the subject lots. Ms. Moye stated that the subject lots are zoned RM-2. Case #19083 also includes the existing duplexes to the west, however, the approval was for the setbacks but not the lot widths, and covers all the lots. Ms. Moye stated that the previous code required a ten foot setback but it was reduced to five feet.

Mr. Van De Wiele asked Ms. Oltman to give the Board her hardship for the requested Variance. Ms. Oltman stated a lot split would be needed and only two duplexes could be built instead of three.

Mr. Van De Wiele asked Ms. Oltman when the other six duplexes were built. Ms. Oltman stated that they were built between 2011 and 2013.

Ms. Blank suggested the Board should make it clear in their motion that there are three different lots and the approval is for each lot.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Flanagan, Snyder, Van De Wiele, White “aye”; no “nays”; no “abstentions”; none absent) to **APPROVE** the request for a **Variance** to reduce the minimum lot width from 60 feet to 50 feet to permit a duplex, per lot, in the RM-2 District (Section 5.030-A), subject to per plan 4.11, 4.12 and 4.13. This approval is for three lots. The Board determines that the following facts, favorable to the property owner, have been established:

- a. That the physical surroundings, shape, or topographical conditions of the subject property would result in unnecessary hardships or practical difficulties for the property owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;
- b. That literal enforcement of the subject zoning code provision is not necessary to achieve the provision's intended purpose;
- c. That the conditions leading to the need of the requested variance are unique to the subject property and not applicable, generally, to other property within the same zoning classification;
- d. That the alleged practical difficulty or unnecessary hardship was not created or self-imposed by the current property owner;
- e. That the variance to be granted is the minimum variance that will afford relief;
- f. That the variance to be granted will not alter the essential character of the neighborhood in which the subject property is located, nor substantially or permanently impair use or development of adjacent property; and
- g. That the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of this zoning code or the comprehensive plan; for the following property:

LTS 4, 5 and 6, BLK 6, BROADVIEW HGTS ADDN, CITY OF TULSA, OSAGE COUNTY, STATE OF OKLAHOMA

22051—Brian Kaske

Action Requested:

Variance to allow a two-story detached accessory building (garage/apartment); Variance to allow a detached accessory building that exceeds 18 feet in height and exceeds 10 feet at the top of the top plate (Section 90.090-C2.a.1); Variance to allow an accessory building to exceed 30% of the coverage area in the rear setback (Section 90.090-C). **LOCATION:** 1128 East 17th Place South **(CD 4)**

Presentation:

Brian Kaske, 1128 East 17th Place, Tulsa, OK; stated the house is over 100 years old and had a detached garage with an apartment along the side. This garage was structurally unsound and did not accommodate modern vehicles. His idea was to replace the old structure with one that functions and gives him additional space for his family. The proximity to the lot lines and the location of the pool would prevent him from being able to make the building any larger than one story and allow additional space for his family and parking space for the vehicles. Mr. Kaske stated that within the Maple Ridge area he has found at least 25 similar two-story garage apartment structures. Mr. Kaske had pictures of the similar structures in the neighborhood placed on the overhead projector. The new structure will occupy the same footprint of the setback as the old structure and the width will be the same. The face of the new garage will extend approximately two feet farther and the overall footprint will be approximately 60 square feet bigger.

Mr. White stated that the house is located in a historic preservation overlay and he asked Mr. Kaske if the Tulsa Preservation Committee had given their blessing on the project. Mr. Kaske stated that he was informed by TPC that he did not need to submit anything to them.

Mr. Van De Wiele asked Mr. Kaske what the upstairs portion of the garage was going to be used for. Mr. Kaske stated that it will be additional space for his family. Mr. Van De Wiele asked Mr. Kaske if there were any plans to rent out the upper portion of the garage. Mr. Kaske stated that he had submitted a letter with his application stating that there are no intentions of renting the upper portion to anyone.

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, Flanagan, Snyder, Van De Wiele, White “aye”; no “nays”; no “abstentions”; none absent) to **APPROVE** the request for a Variance to allow a two-story detached accessory building (garage/apartment); Variance to allow a detached accessory building that exceeds 18 feet in height and exceeds 10 feet at the top of the top plate (Section 90.090-C2.a.1); Variance to allow an accessory building to exceed 30% of the coverage area in the rear setback (Section 90.090-C), subject to the conceptual plans 5.16 and 5.17. The Board has found that garage to be reconstructed on the property will be a replacement of an existing out building that will be slightly larger to accommodate newer larger automobiles. The to be constructed garage will increase in square footage and that it will be no closer to the rear or side property owners but will extend closer to the principle residence thus taking additional coverage area on the lot. The Board has also found that there multiple two-story garages in the neighborhood and the overall area and that it will be in keeping with the neighborhood and style of the architecture of the homes in the surrounding area. The Board determines that the following facts, favorable to the property owner, have been established:

- a. That the physical surroundings, shape, or topographical conditions of the subject property would result in unnecessary hardships or practical difficulties for the property owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;
- b. That literal enforcement of the subject zoning code provision is not necessary to achieve the provision's intended purpose;
- c. That the conditions leading to the need of the requested variance are unique to the subject property and not applicable, generally, to other property within the same zoning classification;
- d. That the alleged practical difficulty or unnecessary hardship was not created or self-imposed by the current property owner;

- e. That the variance to be granted is the minimum variance that will afford relief;
- f. That the variance to be granted will not alter the essential character of the neighborhood in which the subject property is located, nor substantially or permanently impair use or development of adjacent property; and
- g. That the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of this zoning code or the comprehensive plan; for the following property:

ALL LT 2 & E.17 OF LT 3 BLK 1, MAPLE RIDGE ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

22052—Quik Trip – Michael Ward

Action Requested:

Variance of the minimum street frontage from 50 feet to 0 feet to allow a lot split (Section 15.030). **LOCATION:** 10338 East 11th Street South (CD 5)

Presentation:

Michael Ward, Quik Trip, 4705 South 129th East Avenue, Tulsa, OK; stated that Quik Trip is currently operating a store at the subject location and lease the back tract, Tract A, to Green Country Trailers. They are seeking to expand their business and to own their building. Quik Trip is not set up to be landlords long term so Quik Trip would like to separate this lot off. Quik Trip wants to make sure they do not hinder the development of their new generation store. Access will remain the same as Green Country Trailer because it leads to a signalized intersection and this will be done by a reciprocal easement agreement. Quik Trip has two signs, one a billboard sign and the other a high rise sign that are at risk. The high rise sign, if the lot were to be split off, will no longer be abutting the highway and Quik Trip could not longer have a 50 foot sign as allowed today. The billboard sign, through Oklahoma Department of Transportation (ODOT), will become an off premise sign and Quik Trip would not be allowed to permit that sign within 500 feet of that interchange. Quik Trip chose the subject location because of visibility. The Quik Trip contract with Green Country Trailers is contingent on this request being approved.

Mr. Van De Wiele asked Mr. Ward how legal access would be provided to Tract A. MR. Ward stated that it would be provided through a reciprocal easement agreement, which is in the Board's agenda packet.

Mr. Van De Wiele asked Mr. Ward if the underground tanks were going to be under the access easement. Mr. Ward stated they will be very close to the easement with parking on the other side of it. The fill ports will not be within the easement area but the tank shell may extend into it.

Mr. Van De Wiele asked Legal staff if they had any issues with the easement. Ms. Blank stated that the legal staff discussed the situation this morning and their concerns

were making there was emergency access available for the parcel to the south. Ms. Blank stated the easement document could be modified to if it seems necessary to provide for that. This is a private easement and should be subject to the easement being recorded.

Ms. Snyder asked Mr. Ward if Tract B was going to include the unplatted area. Mr. Ward stated they are going to be combined to one tract.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Flanagan, Snyder, Van De Wiele, White “aye”; no “nays”; no “abstentions”; none absent) to **APPROVE** the request for a **Variance** of the minimum street frontage from 50 feet to 0 feet to allow a lot split (Section 15.030), subject to per plans 6.13, 6.14, 6.15 and 6.16. The Board has found that the hardship is that in order to consolidate the operations the parties involved need to rearrange the distribution of the area of their property and provide access to 11th Street for public emergency vehicles. The easement is to be recorded. The Board determines that the following facts, favorable to the property owner, have been established:

- a. That the physical surroundings, shape, or topographical conditions of the subject property would result in unnecessary hardships or practical difficulties for the property owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;
- b. That literal enforcement of the subject zoning code provision is not necessary to achieve the provision’s intended purpose;
- c. That the conditions leading to the need of the requested variance are unique to the subject property and not applicable, generally, to other property within the same zoning classification;
- d. That the alleged practical difficulty or unnecessary hardship was not created or self-imposed by the current property owner;
- e. That the variance to be granted is the minimum variance that will afford relief;
- f. That the variance to be granted will not alter the essential character of the neighborhood in which the subject property is located, nor substantially or permanently impair use or development of adjacent property; and
- g. That the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of this zoning code or the comprehensive plan; for the following property:

COMM 50E & 265S NWC NE NW TH S185 E599.06 TO POB TH E392.98 NW325.70 W72 S170 W236.56 S214.99 POB SEC 7 19 14 2.12ACS, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

22054—Michael Bieniek

Action Requested:

Special Exception to permit a 175 foot monopole tower and support equipment in the OL District (Section 15.020-C); Special Exception to reduce the required setback (110% of the tower height) from the abutting R Districts Section 40.420-E.

LOCATION: 5001 East 91st Street South (CD 8)

Presentation:

Michael Bieniek, 10700 West Higgins Road, Suite 240, Rosemont, Illinois; stated he is with the company called LLC Telecom Services and the company represents Ecosite and T-Mobile. Ecosite is doing what is called a "build to suit" tower that will accommodate T-Mobile's needs. Mr. Bieniek had two different maps placed on the overhead projector to show coverage in the area. Ecosite is proposing a 170 foot tower to be located within a 40 x 50 lease area that will accommodate T-Mobile's equipment. There will be a wooden fence surrounding the tower area as well as landscaping for a visual buffer for the ground equipment. Mr. Bieniek stated that when he started in this business 17 years ago the cell sites were located in more of an industrial or rural area so as not to be close to the residential areas. However, that network has built out and what happened is those sites were basically for coverage. Around 2005 Mr. Steve Jobs changed the game by introducing the Smart Phone. The existing infrastructure could not support the telephone calls along with the data usage. There is a phenomenon called "cutting the cord" which refers to the wireless revolution. Today 40% of all households have removed a land line so they are relying on cell coverage for general safety needs. Cable TV is starting to go by the wayside and those cable companies are starting to use the process of using wireless, i.e., Hulu. Companies are starting to build up their infrastructure so that by 2020 there will be no more cable. In areas closer to the residential companies are starting see areas where infrastructure needs to be built. Mr. Bieniek stated that he drove around Tulsa and noticed several towers that were relatively close to residential behind strip centers. A tower does not collapse so the ordinance was written with that concept in mind so that is why there is a 110% fall zone. A tower collapses onto itself should it collapse. Towers are not designed to fail but they are designed with a fail point in it. Mr. Bieniek stated that he provided a fall zone letter from a structural engineer showing that if there was a failure the tower would fall within that leased parcel; it would not leave the site.

Mr. Henke stated that he does not recall the Board approving a tower that is 175 feet tall. The Board typically sees 90 to 120 feet. Mr. Henke asked Mr. Bieniek if he brought propagation maps for a lower level. Mr. Bieniek stated that he did not and he had asked T-Mobile if they could work with the lower level and T-Mobile stated they needed the 170 foot tower.

Mr. Bieniek stated that the proposed tower would not be required to be lit because it is less than 200 feet. Anything fewer than 200 feet unless it is within the proximity of an airport does not need to be lit.

Mr. Bieniek stated that he had looked at the tower located across the street but based on the spacing, there are two existing carriers on that tower, and for T-Mobile to go on the existing tower they would be at the 100 foot level or shorter.

Mr. Van De Wiele asked Mr. Bieniek where the next nearest tower was located. Mr. Bieniek stated the next nearest is at 81st and Memorial which is located behind a strip center. Ms. Miller stated there is also a tower located at 71st and Yale on the northwest corner next to the office building.

Mr. Henke stated that the difficulty with south Tulsa is the hills and the existing businesses that use various towers in the area.

Interested Parties:

Judy Kolbeck, 8902 South Canton Avenue, Tulsa, OK; stated she lives in the Fox Point Addition and she is the Treasurer and on the Board of the Fox Point Home Owners Association. She and the neighbors are asking the Board to deny this Special Exception request. The proposed tower is on a very small tract of land and is very close to the houses in Fox Point. The home owners are concerned about microwaves being emitted from the tower and they think the proposed tower will decrease the value of their homes. Ms. Kolbeck stated that the Home Owners Association will have a meeting in May and she thinks the home owners will get a petition to fight this proposal if necessary.

Vern Suess, 5107 East 91st Place, Tulsa, OK; stated he is here on behalf of the Braden Park Home Owners Association consisting of 68 residents. The neighborhood is just south of the Red Crown Credit Union. There are several reasons the Special Exception requested today should not be approved. The subject property is surrounded by residential; properties on three sides. Adding a cell tower of this magnitude will be visible to all the adjoining neighborhoods and in the back yard of the Fox Point residents. This proposed tower will not add value but will diminish and erode property values. There are two existing cell towers in the immediate area; one is close to 91st and Yale and the other is ½ mile west of 91st in the cemetery. The issues the Zoning Code is authorized to regulate and promote are the very issues this request is attempting to by-pass. The Special Exception for a transmission tower in an OL District is subject to supplemental regulations outlined in Section 40.42, page 40-22 and page 40-43 of the Tulsa Zoning Code dated 01/01/2016. Mr. Suess read and quoted the sections he cited. There is no hardship in this case. The only hardship will be to the adjoining property owners. Mr. Suess would request the Board deny this request.

Ray Klein, 5123 East 91st Place, Tulsa, OK; stated he is a residential real estate agent and he is opposed to this request. This tower at 175 feet will be an eye sore. There are

high winds and tornadoes in the State of Oklahoma thus tower is a concern for a residential area.

Rebuttal:

Michael Bieniek came forward and stated microwaves are a completely different technology. A microwave tower has big drums and they transmit point to point and at no point do they propagate towards the ground. This tower will not accommodate microwave dishes and is not designed to. The regular wireless technology is given a specific frequency to operate under by the FCC and it is certified as being safe. The only way to receive emissions from a tower site would be to stand within four feet of the front of the antennae at the same level. A person is worse off holding his cell phone to his ear than being near a cell phone tower. The power in a cell phone is stronger than the power at the tower. The antennae will emit approximately 100W of power per antennae. Mr. Bieniek stated there is typically a fear that the property values will decrease near a tower and that is not the case, studies have shown that cell towers are a benefit to have in an area even though people do not want to look at them. If a person lives near a tower they are guaranteed they will have better coverage and their technology will be enhanced.

Mr. Henke stated that he does not think the area is an underserved area other than it is an underserved area by T-Mobile. Mr. Bieniek reiterated that the landlines are going away so people must rely on reliable cell coverage.

Mr. Bieniek stated that if the Board would like he could request a continuance and ask T-Mobile's engineer about reducing the height of the tower.

Mr. Van De Wiele stated that he would be willing to entertain that request. He would like to see a new coverage map if T-Mobile were to co-locate on the nearby tower. Mr. Bieniek stated that could be done as well.

Mr. Henke asked Mr. Bieniek how many other carriers were on the existing tower. Mr. Bieniek stated there are two carriers. Mr. Henke asked Mr. Bieniek if he knew the height of the existing tower. Mr. Bieniek stated that he was not sure but it looks to be between 120 feet and 150 feet.

Mr. Van De Wiele stated that the neighborhood that appears to be the most underserved according to the present map is the same neighborhood that has a representative present saying they do not want the tower. Obviously they are either using land lines or they are using an alternative to T-Mobile.

Mr. Henke asked Mr. Bieniek how many other carriers would be allowed on the proposed tower. Mr. Bieniek stated there could be five carriers at most on a 170 foot tower. But there would probably only be four because all of the cable must go in the interior of the monopole and structurally it will be built to withstand any load because of how it is engineered.

Mr. Henke asked Mr. Bieniek who would own the tower. Mr. Bieniek stated that Ecosite would own the tower.

Judy Kolbeck came forward and stated that the tract of land the requested tower is to be built on is a very small tract of land, and she cannot imagine they cannot find another piece of land that is similar and away from residential districts. As a homeowner, and on behalf of 85 other homeowners, she would request the Board deny this request.

Vern Suess stated that the Code sets out a very good plan. The corner of 91st and Yale is a very densely developed area and everyone co-exists very well. Mr. Suess stated there are other sites in the corridor that could be used, i.e., Hunter Park.

Mr. Bieniek stated the tower cannot just be moved as easily as it is said.

Comments and Questions:

None.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 5-0-0 (Henke, Flanagan, Snyder, Van De Wiele, White “aye”; no “nays”; no “abstentions”; none absent) to **CONTINUE** the request for a Special Exception to permit a 175 foot monopole tower and support equipment in the OL District (Section 15.020-C); Special Exception to reduce the required setback (110% of the tower height) from the abutting R Districts (Section 40.420-E), to the April 26, 2016 Board of Adjustment meeting; for the following property:

LT 1 BLK 1, RED CROWN FEDERAL CREDIT UNION, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

22055—Tyler Owsley

Action Requested:

Variance to exceed the 30 inch maximum permitted height above grade in the required front setback to permit a deck along East 41st Street (Section 90.090-C, Table 90-1). **LOCATION:** 2645 East 41st Street South **(CD 9)**

Presentation:

Heather Bell, 2645 East 41st Street, Tulsa, OK; stated that Tyler Owsley is her contractor and is present should the Board have any questions for him. She would like to build a deck in the front and it is in the same area approval was given for a fence. The deck will be sitting on top of a brick wall that exists. The deck will allow entrance and exit into the upper level of the building. Currently there two bedrooms and a bathroom in the upper level and the only access into the upper level is a spiral staircase. A spiral staircase is hinderance when trying to move furniture or, if there were an emergency, a gurney could not be taken up the spiral staircase. Initially the house just had a window for emergency egress and ingress and when the house was

reroofed she had the window changed to a door to be more accommodating for a deck for better emergency access and more convenient for moving furniture in and out. When the house was built the upstairs level was play rooms for the children and she intends making the rooms into guest rooms.

Mr. Van De Wiele asked Ms. Bell why not have the door in the side yard or have an interior stairway, why have it in the front? Ms. Bell stated that the area where the door was place is the only area that does not have the roof around it. This is the only clean line of the front. The rest of the upper level has the roof all the way around it. The second floor is only two rooms with a pullman bath in the middle, it does not encompass the entire footprint of the house.

Mr. Van De Wiele asked Ms. Bell why she did not install an interior stairwell. Ms. Bell stated there is no space for an interior stairwell.

Mr. White asked staff if this type of Variance was in the previous Code. Ms. Moyer stated that she is not sure whether it was in the previous Code, but this is the first time she has seen this type of Variance.

Mr. Van De Wiele asked Ms. Bell how deep the deck would be, or how far would it stick out into the front yard. Ms. Bell stated that the proposed deck will encompass within the existing structure is and it would be about ten feet. The deck will be directly above an existing structure.

Mr. Henke asked Ms. Bell if she planned to store anything on the proposed deck. Ms. Bell stated that she did not. Ms. Bell stated the deck would be used just for entrance and exiting and the family would not even be sitting on it; the business of the road would keep the family from using it as a recreational deck.

Mr. Van De Wiele stated that on page 8.7 if the depth of the deck comes out roughly the same depth as the brick wall that looks like it would be the same depth of the one story portion of the house directly north of the two-story portion. Mr. Van De Wiele stated that he is having a hard time with this Variance. The Code has section that prohibits anything taller than 2 ½ feet of deck in the front yard, so why would the Board approve a deck that is ten feet tall. There has to be another way of doing this. Ms. Bell stated there was no door in the rear, there is just a window. Mr. Van De Wiele asked Ms. Bell if the existing upstairs door was a previous window. Ms. Bell stated that she had turned the window in the front to a door just for this purpose because she did not realize this would be an issue. If she had done this on the back of the house there would have been a privacy issue because they could see into the neighbors back yard.

Mr. Van De Wiele asked staff if a balcony would be allowed in the front yard. Ms. Moyer stated that it would not be allowed due to the height, and the height is what requires the Variance.

Ms. Snyder asked Ms. Bell when the brick was built. Ms. Bell stated the brick wall was built with the house in 1971.

Mr. Flanagan asked Ms. Bell if the stairs to the deck would be seen from the street. Ms. Bell stated the stairs would be hidden behind the brick wall but the railing would be seen.

Mr. Van De Wiele asked if there were bedrooms in the upper level now. Ms. Bell stated there will be but currently it is storage because she only get boxes up and down the spiral staircase.

The main reason for the deck other than the access, is that there is a paved patio below and the deck would provide coverage for that patio which has a hot tub on it. Ms. Bell stated that also her roof is a membrane roof and she does not know if a deck could be built and anchored and not disrupt the integrity of the membrane for the flat roof in the rear area.

Mr. Flanagan stated that if the deck is strictly for access does it need to be 12 x 12? If the deck is strictly for access that is a huge area.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-1-0 (Henke, Flanagan, Van De Wiele, White "aye"; Snyder "nay"; no "abstentions"; none absent) to **DENY** the request for a Variance to exceed the 30 inch maximum permitted height above grade in the required front setback to permit a deck along East 41st Street (Section 90.090-C, Table 90-1) for a lack of a hardship; for the following property:

E100 N124.59 S174.59 E/2 W/2 SE SW & E140 N124.54 S299.13 E/2 W/2 SE SW & S10 N124.54 S299.13 W164.07 E304.07 E/2 W/2 SE SW & E10 N10 W100 E200 N124.59 S174.59 E304.07 E/2 W/2 SE SW .7283AC, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

Mr. Swiney entered the meeting at 2:54 P.M.

22056—Shane Hood

Action Requested:

Special Exception to allow an outdoor commercial assembly and entertainment use in a CBD District (Section 15.020). **LOCATION:** 421 North Boulder Avenue West (**Tenant Space** - 410 North Main Street West, Suite A) (**CD 1**)

Presentation:

Shane Hood, 815 East 3rd Street, Tulsa, OK; stated he represents the Inner Circle Vodka Bar. There is an existing outdoor patio and Inner Circle uses this patio very similar to how Fassler Hall uses theirs. The initial permit for the patio was submitted two years ago for spacing verification which was approved and construction was finished about a year ago. At the time the initial permit was submitted there was no mention in the Zoning Code about exceeding 15% of the interior. The patio is intended for overflow capacity, outdoor games and additional seating.

Interested Parties:

Lori Shran, 10 East Archer, #1027, Tulsa, OK; stated she is here on behalf of the neighbor, The Davenport Lofts, which is a mixed use owner occupied condo project planned directly east of the Inner Circle Vodka Bar. She wanted to take this opportunity to express the neighbors full support for the Special Exception request. She has lived in the district for four years in an apartment at the Metro at Brady. The Davenport Lofts residences have been thoughtfully designed with sound proofing materials and construction techniques so therefore the Lofts are not concerned about noise.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Flanagan, Snyder, Van De Wiele, White “aye”; no “nays”; no “abstentions”; none absent) to **APPROVE** the request for a Special Exception to allow an outdoor commercial assembly and entertainment use in a CBD District (Section 15.020), subject to conceptual plan 9.10. 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:

S3 LTS 2 & 7 & ALL LTS 3 THRU 6 & 20 VAC ALLEY ADJ THEREOF & N30 VAC STREET ADJ ON S BLK 8, TULSA-ORIGINAL TOWN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

22057—Eller & Detrich – Lou Reynolds

Action Requested:

Special Exception to permit a ground sign within the Boulder Avenue right-of-way in the CBD District (Section 60.020-E). **LOCATION:** 1215 South Boulder Avenue East (**CD 4**)

Presentation:

Lou Reynolds, Eller & Detrich, 2727 East 21st Street, Tulsa, OK; stated he represents the owner of the former Blue Cross Blue Shield building. This building has over 130,000 square feet of rental space and about 55,000 square feet has been leased to the University of Tulsa, Oxley College and Health Sciences, and Hurricane Health Clinic. The sign is proposed to be placed on the northwest corner of the property. This sign will be on the property that is owned by the building and is not in the Boulder right-of-way. The major street and highway plan for the City of Tulsa shows Boulder as being 80 feet wide and Boulder is not 80 feet wide. The Zoning Code requires a Special Exception for signs in the planned right-of-way and it also requires a license agreement which is actually not proper because the City cannot give permission to place a sign on your own property. Mr. Reynolds stated that he spoke with City Legal and negotiated a removal agreement if for some reason the City were to widen Boulder.

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, Flanagan, Snyder, Van De Wiele, White “aye”; no “nays”; no “abstentions”; none absent) to **APPROVE** the request for a Special Exception to permit a ground sign within the Boulder Avenue right-of-way in the CBD District (Section 60.020-E), subject to conceptual plan 10.10 showing the location of the sign and 10.11. The applicant is to execute a removal license agreement with the City of Tulsa. 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:

LTS 4 THRU 8 BLK 6 FRIEND GILLETTE & ALL LT 1 & PRT LTS 2 & 9 & 10 BLK 2 HORNER & 16 VAC ALLEY ADJ THERETO BEG NEC LT 4 BLK 6 FRIEND GILLETTE TH S135.5 NWLY277.23 N255.35 E146 S150 E130 POB, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

18092-A—Jeff Castleberry

Action Requested:

Modification to a previously approved site plan (BOA-18092) to permit an extension to an existing patio for Caz's Chowhouse. **LOCATION:** 124 North Boston Avenue East (Tenant Space – 18 E Mathew Brady St) (CD 4)

Presentation:

Jeff Castleberry, 1841 South Peoria Avenue, Tulsa, OK; stated this request is for an extension to an existing patio by erecting a canopy over the existing patio and to make it uniform and consistent over the entry area. The brick columns would be removed and be replaced with a 4" x 4" tubular column sleeve system. This would be a more removal system than what exists now and less permanent looking. The canopy will not be connected to the building other than a weather proofing system between the two structures.

Mr. Van De Wiele asked Mr. Castleberry if the footprint of the patio was changing. Mr. Castleberry stated that the footprint of the patio will not be changing.

Mr. Swiney stated that a license agreement will be required for the canopy, and he does not think the license agreement has been negotiated as of yet.

Mr. Castleberry stated there is a license agreement for the current existing patio.

Ms. Miller stated that it is her understanding that there is another license agreement going through the process now. Mr. Castleberry stated that he filed for the license agreement the 28th of February and received a response last week. He is currently working with the people that have objections.

Interested Parties:

Anthony Dobbs, Robert Johnson Architects, 117 North Main, Sand Springs, OK; stated there is a 1998 BOA case that allowed a 25 foot wide patio 36 feet from the east side of the building. Mr. Castleberry's patio is about 17 feet from the east side of the building. He would like to have a uniform canopy over the patio and entrance.

Comments and Questions:

None.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 5-0-0 (Henke, Flanagan, Snyder, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Modification to a previously approved site plan (BOA-18092) to permit an extension to an existing patio for Caz's Chowhouse. This approval is subject to the condition that a license agreement be negotiated and executed between the City of Tulsa and the applicant with a further note that this is predominately for the construction of a canopy or other covering over the existing patio and the entrance to the facility. In

approving the requested modification to the site plan the Board has found that the modifications are compatible with and not injurious to the surrounding area and meet the previously granted Board relief or meets the zoning requirements per Code; for the following property:

N50 LT 1 & E10 VAC ALLEY ADJ ON W BLK 41, TULSA-ORIGINAL TOWN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

22058—A-MAX Sign Company, Inc.

Action Requested:

Variance to allow a projecting sign and associated framework to extend 12 feet above the top of the parapet wall (Section 60.040-C); Variance to allow a projecting sign 47 feet above grade with a 32 foot setback from North Main Street (Section 60.080-D); Variance to permit the sign framework of a projecting sign to be attached to the roof of a building in the CBD District (Section 60.080).

LOCATION: 223 North Main Street East (CD 4)

Presentation:

Lori Worthington, A-MAX Sign Company, 9520 East 55th Place, Tulsa, OK; stated the Variance request for the framework for a projecting sign has already been approved by the City of Tulsa and built by the construction company.

Chris Lilly, Lilly Architects, 203 North Main Street, Suite 213, Tulsa, OK; stated this a historic renovation project for one of the last remaining intact strips of historic Main Street in downtown Tulsa. The sign structure was within the construction documents and permitted through the City. There was license agreement for signage for the building but it did not include above the parapet. This sign in its historic context was above the parapet and this is basically going back to the Ford Dealership. The building was built in 1917 as the original Ford Dealership in downtown Tulsa. The structure has been built back almost identical to the Ford signage that existed. The National Park Service has been involved and has approved the design of the sign, and they think it meets the historic character of the building. Ultimately that is what they are trying to get back to.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **SNYDER**, the Board voted 5-0-0 (Henke, Flanagan, Snyder, Van De Wiele, White “aye”; no “nays”; no “abstentions”; none absent) to **APPROVE** the request for a Variance to allow a projecting sign and associated framework to extend 12 feet

above the top of the parapet wall (Section 60.040-C); Variance to allow a projecting sign 47 feet above grade with a 32 foot setback from North Main Street (Section 60.080-D); Variance to permit the sign framework of a projecting sign to be attached to the roof of a building in the CBD District (Section 60.080), subject to conceptual plan 12.15 and 12.16. The Board has found that this is a historic renovation and the applicant is creating a sign that is similar to the sign from 1917. The new sign has been approved by the National Park Service which is a requirement of a historic tax credit project. The Board determines that the following facts, favorable to the property owner, have been established:

- a. That the physical surroundings, shape, or topographical conditions of the subject property would result in unnecessary hardships or practical difficulties for the property owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;
- b. That literal enforcement of the subject zoning code provision is not necessary to achieve the provision's intended purpose;
- c. That the conditions leading to the need of the requested variance are unique to the subject property and not applicable, generally, to other property within the same zoning classification;
- d. That the alleged practical difficulty or unnecessary hardship was not created or self-imposed by the current property owner;
- e. That the variance to be granted is the minimum variance that will afford relief;
- f. That the variance to be granted will not alter the essential character of the neighborhood in which the subject property is located, nor substantially or permanently impair use or development of adjacent property; and
- g. That the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of this zoning code or the comprehensive plan; for the following property:

N32 LT 5 ALL LT 6 BLK 28 & E10 VAC ALLEY ADJ ON EL, TULSA-ORIGINAL TOWN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

OTHER BUSINESS

22053—Rafaat Kassem

Action Requested:

Special Exception to permit automotive sales in the CS District (Section 15.020, Table 15-2). LOCATION: 9737 East 31st Street South (CD 5)

The applicant has withdrawn the application and is requesting a full refund.

Board Action:

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Flanagan, Snyder, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a full Refund of \$769.50; for the following property:

**S250 E70 LT 4 & S250 W47 LT 5 BLK 1, LONGVIEW LAKE ESTATES CTR ADDN
AMD, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

NEW BUSINESS

None.

BOARD MEMBER COMMENTS

None.

There being no further business, the meeting adjourned at 3:22 p.m.

Date approved: 4/26/16

Franch X. Henke

Chair