

BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1172
Tuesday, October 25, 2016, 1:00 p.m.
Tulsa City Council Chambers
One Technology Center
175 East 2nd Street

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	OTHERS PRESENT
Van De Wiele, Chair White, Vice Chair Flanagan, Secretary Back Bond		Miller Moye Sparger Ulmer	Swiney, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Thursday, October 20, 2016, at 10:13 a.m., as well as at the Office of INCOG, 2 West Second Street, Suite 800.

After declaring a quorum present, Chair Van De Wiele called the meeting to order at 1:05 p.m.

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

MINUTES

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Back, Bond, Flanagan, Van De Wiele White "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the **Minutes** of the October 11, 2016 Board of Adjustment meeting (No. 1171).

NEW APPLICATIONS

22151—KKT Architects – Nicole Watts

Action Requested:

Special Exception to permit wholesale distribution and storage of equipment and materials (Section 15.020); Variance of parking from 170 to 155 spaces (Section 55.020). **LOCATION:** 5202 South Harvard Avenue East **(CD 9)**

Presentation:

Staff requests the case be continued to November 8, 2016 to allow additional time for a correction to the notice.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Back, Bond, Flanagan, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **CONTINUE** the request for a **Special Exception** to permit wholesale distribution and storage of equipment and materials (Section 15.020); **Variance** of parking from 170 to 155 spaces (Section 55.020) to the November 8, 2016 Board of Adjustment meeting; for the following property:

PRT BLK 1 BEG SECR TH W400 N440 E185 S152 E215 S288 POB, HARVARD PARK SOUTH AMD, City of Tulsa, Tulsa County, State of Oklahoma

22154-Osage—Ronald Wise

Action Requested:

Variance of the required parking for a restaurant from 16 spaces to 13 spaces in the CS District (Section 55.020). **LOCATION:** 505 West Newton Street North (CD 1)

Presentation:

Staff requests the case be continued to November 8, 2016 to allow additional time for a correction to the notice.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Back, Bond, Flanagan, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **CONTINUE** the request for a **Variance** of the required parking for a restaurant from 16 spaces to 13 spaces in the CS District (Section 55.020) to the November 8, 2016 Board of Adjustment meeting; for the following property:

A tract of land in the SE/4 of Section 27, Township 20 North, Range 12 East, I.M., Osage County, Oklahoma more particularly described as follows: Beginning at the Southeast Corner of the SE/4 of Section 27; thence North 80 feet; thence West 165 feet; thence South 80 feet; thence East 165 feet to the POB , City of Tulsa, Tulsa County, State of Oklahoma

22152—Eller & Detrich – Lou Reynolds

Action Requested:

Special Exception to permit a governmental service (Iron Gate community soup kitchen and grocery pantry) in the CBD District (Section 15.020). **LOCATION:** East of the NE/c of East 8th Street South & South Elgin Avenue East **(CD 4)**

Ms. Back and Mr. Flanagan recused at 1:12 P.M. and left the room.

Mr. Van De Wiele abstained at 1:12 P.M. and turned the chair over to Mr. White.

Mr. Swiney stated that under normal circumstances it is required to have a vote of three members of the Board of Adjustment in order to grant a Variance, Special Exception or other substantive issues. In matters of simple procedures, such as granting a continuance, granting a refund or approval of calendar schedules it is not necessary to have an affirmative vote of three members but rather the majority of those present. Therefore, if there were a continuance requested that continuance could be granted with only a vote of two of a Board of three members as there is today. Mr. Swiney stated that it is his understanding that there will be a request for continuance brought before the Board.

Mr. White stated this is very unusual to have three Board members recuse on a case and he asked Mr. Swiney what the next step should be.

Mr. Swiney stated the request for the Special Exception is on the agenda today. It is his understanding is that there are parties that will be requesting a continuance of the matter.

Mr. White asked Mr. Swiney if Mr. Reynolds should make an introduction of the case. Mr. Swiney answered affirmatively.

Presentation:

Lou Reynolds, 2727 East 21st Street, Tulsa, OK; stated he represents Iron Gate. Mr. Reynolds stated that he has no objection to the request for continuance by the Downtown Coordinating Committee. He would ask that if the Board grants the continuance request they grant it for a date sooner than December 13, 2016 and would suggest November 17, 2016 as a Special Meeting of the Board of Adjustment.

Interested Parties:

There were several interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **BOND**, the Board voted 2-0-3 (Bond, White "aye"; no "nays"; Back, Flanagan, Van De Wiele "abstaining"; none absent) to **CONTINUE** the request for a **Special Exception** to permit a governmental service (Iron Gate community soup kitchen and grocery pantry) in the CBD District (Section 15.020) to the November 17, 2016 Board of Adjustment Special Meeting; for the following property:

West 15 feet of Lot 1, Block 169, Part of Lots 2, 3, 8 and 9, beginning Northwest corner Lot 8 thence South 300 feet, East 137.65 feet, North 300.15 feet, West 147.10 feet to the Point of Beginning, Block 169, Part of Lots 2, 9 and 10 and vacated alley between, beginning at the Northeast corner Lot 9, Westerly 52.9 feet; Southerly 300.15 feet, Easterly 62.35 feet, Northerly 150 feet, Northeasterly 15 feet, NW .80, Northeasterly 35 feet, Northwesterly 149.2 feet, Southwesterly 50 feet to the Point of Beginning, Block 169, Tulsa-Original Town, City of Tulsa, Tulsa County, State of Oklahoma

Mr. White stated this case is very unusual. He has been on the Board for 20 years and he has never seen or had this situation come up before so these are unusual constraints. Mr. White stated the meeting will be held on November 17, 2016 at 1:00 P.M. in the Council Chambers Room. Mr. White reminded the audience that the 17th is a Thursday not a Tuesday.

Ms. Miller reminded the audience that this is the notice as the continuation of this case.

**Ms. Back, Mr. Flanagan and Mr. Van De Wiele re-entered the meeting at 1:16 P.M.
Mr. Bond left the meeting at 1:16 P.M.**

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OTHER BUSINESS

22160—Ron D. Brown

Action Requested:

Special Exception to permit a law office in the RM-2 District (Section 5.020); Variance of the off-street parking requirement for an office use in the RM-2 District (Section 55.020). **LOCATION:** 214 West 13th Street South **(CD 4)**

Presentation:

The applicant has withdrawn his application and requests a full refund.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Back, Flanagan, Van De Wiele, White “aye”; no “nays”; no “abstentions”; Bond absent) to **APPROVE** the request for a Full Refund of \$784.00; for the following property:

LT 12 BLK 5, FRIEND ADDN, City of Tulsa, Tulsa County, State of Oklahoma

Mr. Van De Wiele stated that Mr. Bond had to leave the meeting for a court hearing. He explained to the applicants and interested parties that there were only four board members now present at this meeting, and if an applicant or an interested party would like to postpone his or her hearing until the next meeting he or she could do so. If the applicant wanted to proceed with the hearing today it would be necessary for him to receive an affirmative vote from three board members to constitute a majority and if two board members voted no today the application would be denied. Mr. Van De Wiele asked the applicants and the interested parties if they understood and asked the applicants or interested parties what they would like to do. The audience nodded their understanding and there was one request for a continuance.

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UNFINISHED BUSINESS

22135—Stephen Schuller

Action Requested:

Special Exception to permit a fence height greater than 8 feet in the required rear yard setback (Section 45.080-A). **LOCATION:** 5715 East 105th Street South **(CD 8)**

Presentation:

Stephen Schuller, 1100 OneOk Plaza, 100 West 5th Street, Tulsa, OK; stated that his client had requested that he request a continuance if there was not a full Board in attendance due to the sensitivity in this matter.

Interested Parties:

Lelia McCoy, 5714 East 104th Place, Tulsa, OK; stated there are several neighbors who are very concerned about this case and everyone was in attendance at the September meeting. At that meeting everyone was assured the case would be heard today. Neighbors have taken off work or changed plans to be in attendance today. Today's meeting started with a full Board so who is to say if this were rescheduled again Mr. Bond wouldn't have another court case. So how long is this going to be continued? Ms. McCoy stated that she understood the request for continuance last month when there were only three Board members in attendance but she believes that four Board members is more than enough to hear this case. Ms. McCoy believes the neighbors have the right to be heard today and have the case decided upon today. She does not see any reason to continue this case to December and she has no assurances that the case would not be continued again.

Cynthia Rothenbucher, 10509 South Joplin Avenue, Tulsa, OK; stated she cannot appreciate the request for continuance. The applicant did not come here today himself. He did not take time off from his business. He is only paying an attorney to attend this meeting. Why is that more important than the neighbors and their time? She does not see why Mr. Schuller's request would be more important than the neighbor's request.

Comments and Questions:

Mr. White stated the case was continued once for Mr. Schuller, and the Board has given a chance to each side for a continuance. He can appreciate Mr. Schuller's concern and representing his client, but he cannot see a reason to continue the case.

Ms. Back stated that she understands the neighbors concerns and understands taking time away from work to attend a meeting where you thought your comments would be heard. She also understands Mr. Schuller's concerns for his client; he is only relaying his client's request. Ms. Back stated the Board has a quorum so she would side with the neighbors.

Board Action:

No Board action required at this time. There was no motion for a continuance. The case will be heard in agenda order.

22129—Patrick M. Fox

Action Requested:

Special Exception to allow a medical office in the RM-2 District (Section 5.020, Table 5-2); Variance to reduce the required building setback from the abutting R zoned lots occupied by a residence (Section 5.030-B). **LOCATION:** 1715 South Peoria Avenue East **(CD 4)**

Presentation:

Patrick M. Fox, 624 South Boston, Suite 700, Tulsa, OK; stated this case has been continued a couple of times and the purpose of which was to obtain a Certificate of Appropriateness from the Tulsa Preservation Commission as this project is located within the Swan Lake historic district. It took four meetings to obtain the Certificate of Appropriateness and he apologized for any inconveniences that may have caused. The building meets the requirements for OL and it does not place an undue burden on the property itself. The hardship is associated with the design guidelines that had to be met by being a part of the preservation district. The subject property had to meet not only the architectural character and appropriateness of the building within the district, but it also had to meet the location and sighting of the building. The Preservation Commission's concern is that the building has as little an impact on the adjacent residential district as possible. The need to sit back 25 feet from the R District would have made this building impossible to design and meet the guidelines for the design of the building in terms of its orientation to the street and impossible to meet the parking requirements necessary and it would have violated a tenant of the Preservation Commission's guidelines which dictates that parking should be located as far away from residential districts as possible. The option of placing parking in the rear or on the side would have been in violation of the guidelines. After working with the Preservation Commission the building design was approved with a 9 to 1 vote. One of the issues on the subject property is the drainage. The existing property has a small residential house on it which he is attempting to relocate into a preservation district as part of a compromise. The subject property has a severe slope toward the adjacent residential properties behind it and Dr. McCormick's office drains toward the rear of the lot. The water flow is going to be changed and it will be toward the street away from the residential district which will make a drastic improvement on the subject property.

Interested Parties:

Christian Oliva, 1716 South Quaker Avenue, Tulsa, OK; stated she is pleased to hear about the proposal for the rainwater runoff, because she has had many issues in her yard and so have her neighbors. Her backyard abuts the subject property and her house is below the medical building that was built next door to the subject property so she knows two more lots covered with an impervious surface would create a disaster. She is concerned about which elevation the proposed building is going to utilize because where the house is located now sits on the lower portion of the subject property so the location of the proposed building will make a big difference on the drainage into the neighborhood. She is also concerned about another commercial property being built in the neighborhood because it is supposed to be a residential

neighborhood with commercial zoning on 15th Street not on Peoria. Her preference is to have the area remain residential. Ms. Oliva presented pictures depicting the drainage as it is today and explained how the stormwater is collected and dispersed.

Mr. Van De Wiele stated the Board of Adjustment does not typically deal with drainage and water runoff because it is addressed in the construction process of the properties.

Tracey Yearows, 1720 South Quaker Avenue, Tulsa, OK; stated her property is south of the subject property. Her concerns are also the stormwater drainage.

DeeAnn Beal, 1724 South Quaker Avenue, Tulsa, OK; stated she is too concerned about stormwater drainage because everyone has suffered from the stormwater drainage issues from the first medical office which exists.

Mr. Van De Wiele asked Ms. Beal if her concern is the use or is it primarily the drainage issues. Ms. Beal stated that she is not thrilled there is a proposed medical commercial building for the subject property, but she is definitely worried about what her recourse will be if there are further water issues.

Chip Atkins, 1638 East 17th Place, Tulsa, OK; stated he was the property manager of 1716 South Quaker Avenue and flooding has been an ongoing issue since the first medical office was built. The neighbors were promised during the construction of the first medical building that the water flow would go into Peoria but that promise was not fulfilled. Mr. Atkins stated that he questions the boundary lines of the situation being presented today. TMAPC, the City Council, and the Tulsa Preservation Commission all voted on non-office light or above RS District zoning within the HP overlay. It is intent is single family, multi-family residential historic neighborhood as the map indicates on the HP overlay. In several meetings the neighbors expressed their concerns about this and Mr. Joe Westervelt stated there would be no office light or above in an HP overlay of Swan Lake. Mr. Atkins presented a map that depicted there is no commercial in the HP overlay district. Mr. Atkins questioned how the Board can consider a request for a Special Exception that would permit this to happen.

Mr. Van De Wiele stated that he is not sure when the HP overlay came into effect but several years ago he helped a client obtain a Special Exception to use a property south of the subject property as a law office so there is some office type in the area. The difference of today and the client he helped is that it was not a tear down for a new office. Mr. Van De Wiele asked Mr. Atkins, if what he is saying is true, how that jives with the client having a HP permit. Mr. Atkins stated that he does not think the Tulsa Preservation Commission understood what the circumstances of the case were. Mr. Atkins agrees that there is a HP permit which is permissible by City Code under the HP Ordinance which states businesses can have a Certificate of Appropriateness within a HP overlay in some neighborhoods. When Swan Lake was originally mapped it was mapped without any commercial entities whatsoever.

Ms. Back stated the Board would not be able to grant a Special Exception if there was not a Special Exception clause in the Code. Today's request is not a Variance. There is a Special Exception allowance for every case. Mr. Atkins stated that he understands that but then it goes against the judgment of the Board of Adjustment when the overlay came into existence. Because the Board of Adjustment in its intent was to keep all office light and above out of the HP overlay. Now if the Board allows it in the Members will be going against the Board of Adjustment's judgment at that time.

Mr. Van De Wiele asked Ms. Miller to explain the HP overlay. Ms. Miller stated the Code was written to allow that and there is no provision that makes that any different in the HP overlay. Ms. Miller stated that the HP overlay does not dictate the uses, that is what the Zoning Code does and the uses is what the Board is considering today. Ms. Miller stated there may some general language in the HP guidelines but the Zoning Code is where the Board goes to see the law. Mr. Atkins stated that he understands that fully but when the area was mapped out by the Board of Adjustment at the time of the Code they exempted all of the area from office light and above. So why is there something being allowed into the area that was not originally allowed. Ms. Miller stated that TMAPC would have heard and made a recommendation on the HP overlay zoning and then it would have gone to Council. That consideration would not have been a part of the Board of Adjustment's action. Ms. Miller stated that what she does not understand is what was the product of that decision that had the language that said this area should not be commercial? Mr. Atkins stated that was the Board of Adjustment's hearing in December 1997. Ms. Miller asked what the product was. Mr. Atkins stated it was the map of the zoning area. Ms. Miller stated that does not fall under the Board of Adjustment's purview. Mr. Atkins stated that there was a public hearing and it was under the Board of Adjustment's purview at the time, it is in the minutes of the Board of Adjustment. Ms. Miller stated that is a TMAPC function and that does not change over time. Mr. Atkins stated that Brent Pace was on the Board at the time and most the issues were the Helmerich and Payne properties located at 19th and St. Louis being exempted from the map. Because of that everything else was excluded from the map that was OL or above. Mr. Atkins questions whether this is injurious to the neighborhood or not.

Mr. Van De Wiele asked Mr. Atkins if he believed the project is injurious to the neighborhood and if so how. Mr. Atkins stated that Mr. Fox addressed part of that in the overlay of the Zoning with the parking issues. Sometimes there can be a building too close to a property that would infringe on the people who live in the residential part of the area. The other part is that this is an area of stability not an area of change. Another is the water issue which the Board of Adjustment does not address but it would be damaging to the property.

Rebuttal:

Patrick M. Fox came forward and stated the HP guidelines include provisions for commercial buildings, new construction within HP Districts.

Ms. Back asked Mr. Fox to explain to the public how the properties lay out.

Patrick Fox, Fox Architects, 1588 Swan Drive, Tulsa, OK; stated that Dr. McCormick's property is the same size parcel and is just north of the subject property. Dr. McCormick's property is a dental office and an optometrist office. Currently the runoff from that particular development runs to the rear of the property and sheet flows into the alley which does create water issues for the neighbors to the east. Mr. Fox stated when the design process was started he engaged Wallace Civil Engineering to deal with that issue because he does not want to exacerbate the existing conditions, in fact his goal is to solve the current problem.

Ms. Back asked Mr. Fox if Wallace Engineering was still on the project. Mr. Fox answered affirmatively. Ms. Back stated that she must recuse at this time.

Ms. Back recused and left the meeting at 1:50 P.M.

Mr. Van De Wiele asked Mr. Fox if the water flowing across the property to the north flows onto the subject property. Mr. Fox answered affirmatively. Mr. Van De Wiele asked how that water would be rerouted and where would it be rerouted to. Mr. Fox stated there will be retaining walls built along the south and the east property lines so the water can be controlled, both the water from Dr. McCormick's existing building and the water from the proposed building.

Mr. Van De Wiele asked Mr. Fox if he was changing the topography by raising the rear and tipping the land forward. Mr. Fox answered affirmatively. Mr. Patrick M. Fox stated that the rear is being raised to match the front height of the property. Mr. Van De Wiele asked Mr. Fox how much the elevation would be changed. Mr. Fox stated that it will be a 3'-6" elevation change. The two parking lots will intermingle so the water from Dr. McCormick's parking lot will flow through the proposed parking lot and out to the Peoria side.

Mr. Fox stated that when he submits for permit the plans will go through zoning clearance, through Engineering for stormwater and water/sewer analysis, so the review occurs in the building permitting process. There are very specific requirements that will need to be met in that process.

Mr. White asked about the alleyway. Mr. Fox stated that it is actually an abandoned alleyway. Mr. White asked Mr. Fox if there were utilities there. Mr. Fox answered affirmatively. Mr. White asked Mr. Fox if there were storm sewers there. Mr. Fox stated there are no storm sewers; historically it has always been surface flow.

Mr. Fox stated that he was on the Preservation Commission in the 1990s when North Maple Ridge became the first HP District and the original guidelines were developed. Mr. Fox stated that the guidelines for redevelopment by the Preservation Commission include the anticipation of non-residential buildings being built in the overlay. There

were efforts to keep retail commercial buildings out of the district because the boundaries meander around the commercial district.

Mr. Fox stated that the proposed building will have no windows in the rear. The rear of the building is a full finished façade and is the same materials as the front and the side. All mechanical equipment will be held below the screening fence so the neighbor's privacy will not be invaded with noise. He was very careful to acknowledge that it was a single family neighborhood to the rear of the subject property. The building will also provide an acoustical barrier from Peoria which has significant traffic noise.

Comments and Questions:

None.

Board Action:

On **MOTION** of **FLANAGAN**, the Board voted 3-0-1 (Flanagan, Van De Wiele, White "aye"; no "nays"; Back "abstaining"; Bond absent) to **APPROVE** the request for a **Special Exception** to allow a medical office in the RM-2 District (Section 5.020, Table 5-2); **Variance** to reduce the required building setback from the abutting R zoned lots occupied by a residence (Section 5.030-B), subject to conceptual plan 2.19. The additional conditions are that the architect will have the drainage flow westward toward Peoria. There is to be a 3'-6" retaining wall constructed on the east side of the property and the rear façade is stucco with no windows in the rear of the building. All mechanical will not be exposed to the neighbors. The Board has found that the Special Exception will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. 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:

**LT 14 BLK 24 & 10' VAC ALLEY; LT 13 BLK 24 & 10' VAC ALLEY, ORCUTT ADDN,
City of Tulsa, Tulsa County, State of Oklahoma**

Ms. Back re-entered the meeting the meeting at 2:03 P.M.

22135—Stephen Schuller

Action Requested:

Special Exception to permit a fence height greater than 8 feet in the required rear yard setback (Section 45.080-A). **LOCATION:** 5715 East 105th Street South (CD 8)

Presentation:

Stephen Schuller, 1100 OneOk Plaza, 100 West 5th Street, Tulsa, OK; stated he represents the owner, Mr. Donald Jackson. This situation is one that comes up every once in a while. The clients asked a builder to build a deck with a pergola beside the pool and they hired what they thought to be a good builder. Unbeknownst to them the builder built everything without seeking any of the required permits. The City issued a stop work order for the project. The client was having a multi-level deck with a fireplace, a pergola and a privacy fence in the rear. Now the client has decided to have the deck and the pergola removed completely and place them in a different part of the yard. The fence is something they would like to keep thus the request for a Special Exception. Nothing can be removed from the stop work order until the Special Exception is granted. Mr. Schuller presented pictures of the rear privacy fence that exceeds eight feet in height on the overhead projector. The fence exceeds eight feet in height only one end; the west end of the fence is 7'-10" tall with east end of the fence being 9'-9" tall. The reason for this height difference is because the rear yard slopes downward toward the east, but the fence erected at a straight even horizontal height. This fence provides privacy from the neighboring yard for his client and his family while they are at the pool or in the rear yard. It especially provides privacy from the neighbor, whose house is two stories, in the rear.

Mr. Van De Wiele asked Mr. Schuller if a person can see the pool with a ten foot fence then how is the Special Exception helping with that situation, because the windows can be seen with fence as it is constructed now. Mr. Schuller stated a person can see the windows from a distance in the back but when the clients are in the pool or on the deck they are covered from view and lowering the fence would only give the neighbors a better view of his client.

Mr. Schuller stated this is a neighborhood characterized with larger homes on smaller lots as depicted in the photo on page 3.5 of the agenda packet so taller fences are common to protect the privacy of the residents. Mr. Schuller had photos of the neighborhood placed on the overhead projector and referred to letters from the neighbors citing support. Mr. Schuller stated some of the letters cite concern about

precedence being established with this case, but precedence has already been established by other cases in the neighborhood and throughout Tulsa. Mr. Schuller referred to a letter from Katherine Matthews on page 3.34 stating there are a number of property owners in the neighborhood whose fences violate the published covenants. This illustrates there are quite a few other taller fences in the neighborhood.

Mr. Van De Wiele asked Mr. Schuller if he knew how much of the fence was over eight feet. Mr. Schuller stated that he thought about half of the fence but he is not sure.

Mr. Van De Wiele asked Mr. Schuller if the builder provided the measurements of the fence. Mr. Schuller believes the builder provided the measurements. Mr. Van De Wiele asked Ms. Moyer to place photo 3.19 on the overhead projector depicting a man standing in front of the fence. Mr. Van De Wiele stated that he does not know how tall the man in the picture is but the fence looks taller than ten feet. Mr. Van De Wiele asked Mr. Schuller if he knew who took the measurements of 7'-10" to 9'-9". Mr. Schuller believes it was the builder. Mr. Van De Wiele asked Mr. Schuller if there was a grade drop right at the fence line. Mr. Schuller stated that he does not know. Mr. Van De Wiele asked Mr. Schuller if the fence was sitting on top of a retaining wall. Mr. Schuller stated that he did not think so.

Interested Parties:

Mike McCoy, 5714 East 104th Place, Tulsa, OK; stated he is the man in the picture shown earlier and he is 5'-10" in height. Mr. Van De Wiele asked Mr. McCoy to orient the Board to where he is from the subject property. Mr. McCoy stated that he is north of Mr. Jackson's house.

Mr. McCoy stated this situation has been going on for about a year and pictures can tell a thousand words. Mr. McCoy stated he measured the fence and the fence is 11'-7" to 8'-6" in height.

Mr. White asked Mr. McCoy how tall his fence is. Mr. McCoy stated that his fence is about 7'-0" to 7'-4" in height.

Mr. McCoy stated that the mystery about this is that he and the neighbor together built his (Mr. McCoy's fence) fence. They talked about it and they both knew the eight foot fence height was the maximum and they both built the fence about five years ago. Then about a year ago 12'-0" poles were erected so he asked the construction crew about them. Mr. McCoy stated that he reminded the fence crew about the eight foot limit height and the crew stated they knew about them. Mr. McCoy stated the crew told him that the home owner also knew of the restriction but he would build the fence to his specification and worry about the height later.

Mr. McCoy stated that all the houses in the neighborhood are large homes on smaller lots. Most of the houses are 6,000 square feet on a lot without a lot of depth. Mr. McCoy stated there is only 30 feet in his rear yard. Mr. McCoy stated that he has had

difficulty with his growing because of the height of the fence. Mr. McCoy stated the pergola and the deck have been removed and that was done before today.

Mr. White asked Mr. McCoy how much room there is between his fence and the neighbor's fence. Mr. McCoy stated the fence is tight so there is not much room. Mr. McCoy had pictures placed on the overhead projector showing his fence against Mr. Jackson's fence. Mr. McCoy stated that Mr. Clayton Grant, the City Inspector, told him this morning that Mr. Jackson received a letter informing him to remove the pergola and the deck before November 1st or there would fines issued. This week a crew removed the pergola and the deck. Mr. McCoy stated the neighbors were never asked their opinion about the structures until after Mr. Jackson received the letter from the City. Mr. McCoy stated that if one person is allowed a tall fence then other taller fences will follow and that is the concern of the neighbors. Mr. McCoy read a letter from the City of Tulsa Development Services dated April 2016 that stated the fence was in violation of the Code.

Mr. White asked Mr. McCoy if Mr. Jackson was the same neighbor that helped him build his fence. Mr. McCoy answered affirmatively. Mr. White asked Mr. McCoy what the time was from the time his fence was built and when Mr. Jackson erected his fence. Mr. McCoy stated that it was about five years. Mr. White asked Mr. McCoy if he knew of Mr. Jackson's rationale for building a level fence as opposed to one following the contour of the land. Mr. McCoy stated that Mr. Jackson never asked him about anything nor did he discuss anything with him.

Ms. Back asked Mr. McCoy if he knew when the neighbor built his pool. Mr. McCoy stated that his pool was probably built when the house was built about 20 years ago.

Mr. McCoy stated that he asked Mr. Clayton Grant with the City of Tulsa this morning about fencing. Mr. Grant informed Mr. McCoy that he sees very few eight foot fences and typically they are set to be a six foot privacy fence. Mr. Grant stated that he has only seen one ten foot tall fence located at 86th Street North and it was erected to shield from a salvage yard.

Mr. Van De Wiele asked Mr. McCoy if he knew how tall the decks to be removed are or were. Mr. McCoy had a picture placed on the overhead projector showing a gate with steps leading down with a four foot tall trash container next to the steps. Mr. McCoy stated that Mr. Jackson does not have a true fence it is a wall because it is not connected to the side fencing on either side. Mr. McCoy stated that he asked the fence crew why they stopped and didn't connect to the side fence and the crew stated it was because they could not get 12 foot pickets.

Mr. Van De Wiele asked Mr. McCoy to inform the Board where the steps and the trash can are in relationship to the fence. Mr. McCoy stated that the gate is behind the garage going from the deck into the garage but all the decking and the pergola have all been removed this week.

Mr. Van De Wiele asked Mr. McCoy if the full height of the fence extended the full width of his yard. Mr. McCoy stated that it does not. Mr. McCoy compared the fence to a picture; the front is pretty while the back side is ugly. Mr. McCoy stated that is what he is dealing with is the backside of the fence, the ugly side.

Scott Aneshansley, 10425 South Joplin Avenue, Tulsa, OK; stated one of his big concerns is there not a huge gap between the two fences but there is an area that will over time attract rodents because of what will collect in the void, and there is no way to clean that void out. Most of the fences in the neighborhood are six feet and what he saw in the pictures presented by Mr. Schuller appeared to be closer to eight feet. A lot of the houses were built in the early 1990s and they have nine foot ceilings with the fences meeting the eave heights of about eight feet. Many of the houses in the addition have the same condition. There are a lot of two story houses with small back yards so there is going to be privacy issues and that is throughout the neighborhood. It cannot be solved by building a taller fence unless it is a 20 foot high fence which no one wants to see that. The pictures Mr. McCoy presented showing the back side of the fence with the metal poles; that ugliness is visible from 104th Street so it is just affecting Mr. McCoy it affects whoever drives down 104th Street in front of his house.

Robert Rothenbucher, 10509 South Joplin Avenue, Tulsa, OK; stated the aesthetics of the fence from the McCoy's yard is horrible. The picture presented does not show the horror. What the McCoy's are looking is an industrial grade fence. There are galvanized posts and galvanized hardware with a substructure supporting the front boards. The McCoy's have the bad side of the fence facing them and the Jackson's have the good side of the fence. The Jackson's do not have to look at the ugliness. The fence is very unattractive and it can be seen from the street. This fence makes it look like the neighbors live in an industrial neighborhood.

Don Wiruth, 10447 South Joplin Avenue, Tulsa, OK; stated he has been able to see the fence both from the back yard and from the street on the north side of the subject property. As previously indicated it looks really bad and if allowed to stay that way, it will cause people on both sides money on the resale value of their houses. That is a problem. There is a situation here that harkens back to the stories about the difference between engineers and architects. An engineer just wants it to work and an architect just wants it to look nice. He does not think either one were involved on this project. The fence does not look nice.

Carol Coates, 5708 East 104th Place, Tulsa, OK; stated she lives west of the McCoys. She agrees with everything that has been said. The fence is an eyesore. Ms. Coates stated that if Mr. Jackson wanted privacy there are ways of achieving privacy without constructing something that is an eyesore. Ms. Coates stated she planted cherry laurels in her backyard to achieve privacy and they are great. Ms. Coates stated she is trying to sell her house and people comment about the fence. This is an ugly fence.

Cynthia Rothenbucher, 10509 South Joplin Avenue, Tulsa, OK; stated that every house around her has a swimming pool in the backyard. She has a two story house.

No one else has to have an 11'-7" fence to protect their privacy. The majority of the houses have a pool and Mr. Jackson is the only one who thinks he should have a fence with horrific looking posts. Ms. Rothenbucher stated when the other neighbors built fences they built them two sided so they are attractive from both sides, that is why each connecting party pays for half.

Lelia McCoy, 5714 East 104th Place, Tulsa, OK; stated she is very grateful the City forefathers set up rules or guidelines to protect the houses and properties. Ms. McCoy stated that Forest Park South is unique and she met with Mr. Phil Cunningham. Phase I and Phase II have a home owner's association and in Phase III, for whatever reason, there is no home owner's association. Mr. Cunningham, President of the home owner's association, stated this situation would never have gotten to this point had the house been located in Phase I or Phase II because the HOA would have stopped it. This situation started last November and she appreciates the City working with the neighbors and continuing to work with the neighbors to get the restrictive covenants enforced because there is no HOA. Ms. McCoy stated that she read on line seven letters of support but none of those supporters live in their backyard to see the fence. Ms. McCoy stated that four of the seven supporters live in Forest Park South because she would think they would have a concern as a neighbor. Ms. McCoy emphasized that this is really a wall; it is not an end to end fence. It is unfortunate that Mr. Jackson did not come to the neighbors so there could be a more workable arrangement made before he started construction and not ask for forgiveness afterward. Ms. McCoy stated she is confident that the Board members are very fair people or they would not be doing this job, and she thinks the Board can see the gross injustice that has been dealt upon the neighborhood.

Ms. Back asked Ms. McCoy if an option of covering the posts or finishing the rear side is still viable with the neighbors. Ms. McCoy stated the neighbors would be open to discussing the situation with Mr. Jackson.

Rebuttal:

Mr. Stephen Schuller came forward and stated that he will tell everyone what he knows. What statements he made in his presentation are what he knew to be the case from what he had been informed by his client and what he observed driving through the neighborhood. Mr. Schuller stated he did not personally take a tape measure and measure the height of the fence, but he was informed of the height of the fence. He does not what type of measurements the neighbors have proffered. He was not present when the neighbors measured the fence. He was not there when the contractor measured the fence. Mr. Schuller stated that he was told early on, and repeated several times, that the pergola and deck could not be removed pending the City's stop work order. If it has been removed that is news to him. Mr. Schuller stated that the photos of the gate and the trash can are a completely different fence. It is a fence that faces west and is not any part of the subject fence in question. People that have written in have said there are similar fences like the subject fence in the neighborhood. People have also stated that privacy is valuable and they support the fence because it provides more privacy for the Jacksons. Mr. Schuller stated the Special Exception process

allows for these fences upon approval from the Board of Adjustment. There are evidently fences this tall in the neighborhood and other neighborhoods according to the writers so this one fence is not the only fence being discussed. This is about privacy for the Jacksons from the upper story windows on the McCoys house behind them. The fence is the most obvious way to remedy that problem.

Comments and Questions:

Mr. Van De Wiele stated that he knows Mr. Schuller to be an honest attorney. From a comment standpoint on this case, the one picture of the gate and the trashcan is instructive not only as far as how high the deck is or were but frankly now the fence looks a little strange from the applicant's side of the fence as well. Looking at the picture on 3.6 it looks like a fine fence from the height of the deck in question, and if the deck is two, three or four feet tall with a six foot fence it would look odd and people could peek over the fence. With the deck stripped away the fence is going to be unbelievably tall. Looking at the picture of Mr. McCoy in front of the fence looks like it has to be 11 feet tall and the Board knows it gets taller as it goes toward the east. Mr. Van De Wiele stated that he does not have a whole lot of confidence that there is any part of the fence that is less than eight feet tall. Mr. Van De Wiele stated that he is not inclined to grant relief for an 11 or 12 foot fence and reach the conclusion that it is non-injurious to the neighborhood. Mr. Van De Wiele stated that when he replaced his fence and when he looked at an eight foot fence it seemed astronomically tall and to put another two to four feet on top of that seems way out of place in a residential neighborhood so he does not think he can support this request.

Ms. Back stated this is a sad case because the Board does not like to see neighbors in a situation like this. She wishes there was some way the neighbors could talk to find a solution to this situation.

Mr. Flanagan stated that this is certainly not in harmony, spirit and intent of the Code. Mr. Flanagan stated this is a sad situation but looking at the County Assessor's sheet it appears Mr. Jackson has owned the house for seven years so he does not understand why privacy has become such an issue. He cannot support this request.

Mr. White stated that he has encountered several situations similar to this well before he was on the Board. Had he not heard the testimony of the neighbors about how they were getting along his first thought would be that it is a spite fence. When a person sees something like this you think someone put up a fence just to spite the neighbors but everyone seems to have been getting along well which is a surprise. The double sided aspect is a common sense thing to do so he is surprised that in this nice of a neighborhood that the fence was not done. With the other fence being placed so close he agrees there will be a problem with critters and weeds. Mr. White stated that he cannot support the request.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Back, Flanagan, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Bond absent) to **DENY** the request for a **Special**

Exception to permit a fence height greater than eight feet in the required rear yard setback (Section 45.080-A) finding the fence to be injurious to the neighborhood; for the following property:

LT 7 BLK 4, FOREST PARK SOUTH III, City of Tulsa, Tulsa County, State of Oklahoma

22139—Lemuel Adams

Action Requested:

Variance of the permitted display surface area for wall signs in the CS District to 541.72 square feet (Section 60.080). **LOCATION:** 1116 South Garnett Road East
– **Tenant Space:** 1140 South Garnett Road East (CD 5)

Presentation:

Lemuel Adams, Green Country Advertising, 3920 Chandler Road, Muskogee, OK; stated his client would like to place a sign on his building. He currently has a banner in place that is over the square footage allowed. The proposed sign will be placed on the east wall.

Ms. Back asked if the sign was a full or partial digital sign. Mr. Adams stated the sign is a partial digital sign.

Interested Parties:

Phil Baker, 11004 East 11th Place, Tulsa, OK; stated he lives directly behind the subject property. Mr. Baker stated that as far as he can tell the sign in question is already in place. The sign is visible from Route 66 and there have been a lot of tax dollars gone into beautifying the streets. The east gateway was built and 3/10 of a mile past the gateway a person can see this sign. This is some of the ugliest signage in Tulsa and he thinks if the Board stays within the Code and clean this whole mess up and make it a lot more attractive it will suit the needs of the business and the community.

Rebuttal:

Mr. Lemuel Adams came forward and stated the sign that is in place is what the client wanted. He approved the art work and the design. A permit was issued and the sign was installed. The Variance application is because of the square footage issue.

Mr. Van De Wiele asked Mr. Adams if there were multiple tenants in the building. Mr. Adams answered affirmatively.

Mr. Van De Wiele asked Mr. Adams if the larger white sign was advertising three different tenants and this is now a fourth tenant. Mr. Adams stated that he believes that it is all the client's property. He has several businesses. This is a grocery store and he owns several other properties throughout Tulsa.

Ms. Back if the uses advertised on the large sign are in the building. Mr. Adams stated that he believes they are.

Mr. White stated that Mr. Adams has brought a request before the Board for a restaurant and he asked Mr. Adams if it was for the same person. Mr. Adams answered affirmatively.

Mr. Van De Wiele asked Mr. Adams if there was a grocery store at the subject location. Mr. Adams answered affirmatively. Mr. Van De Wiele stated the sign appears to be advertising a radio station or TV station and asked Mr. Adams if that were so. Mr. Adams stated the client does own a radio station in Tulsa. Mr. Van De Wiele asked Mr. Adams if it were broadcast from the subject location. Mr. Adams stated that it was not broadcast from the subject property.

Mr. Van De Wiele asked Ms. Miller if that created problems. Ms. Miller stated that she does not understand why that would be on the sign. Ms. Miller stated that the client needs to advertise the business that the sign is on. Mr. Adams confirmed his understanding of that statement. Ms. Miller stated this is considered an off premise sign. Mr. Adams confirmed his understanding of that statement.

Mr. White left the meeting at 3:05 P.M.

Mr. Van De Wiele asked Mr. Adams if the entire subject building was a grocery store. Mr. Adams answered affirmatively. Mr. Adams stated the banner was in place before he received the contract. Ms. Back asked Mr. Adams if it was a banner or a sign. Mr. Adams stated that it is a banner that can be peeled off.

Mr. Van De Wiele asked Mr. Adams what the new sign would be advertising. Mr. Adams stated the proposed sign would be advertising the grocery store, Los Americas Grocery Store with the LED below advertising the products inside.

Mr. White re-entered the meeting at 3:07 P.M.

Mr. Van De Wiele stated there are two issues in this case. Number one, there is the sign size. Mr. Van De Wiele stated that he does not think the client is permitted to place the TV or radio station signs up because it is considered an off premise business sign advertising something other than the use of the subject property. Mr. Adams stated that he could address that with the client but the banner was in place before he received the contract. Mr. Adams stated that if the sign needs to come down he can tell the client.

Mr. Van De Wiele asked staff what is the square footage the client is allowed by right. Ms. Moye stated the permitted square footage is 225 square feet. Mr. Van De Wiele asked if the size of the lot, the size of the building and the orientation of the building serve as a basis for increasing the amount of signage.

Mr. White asked Mr. Adams if the owner was considering changing the banner sign in any way. Mr. Adams stated his client does not own the property, he is just a tenant but his client has been very cooperative regarding the requirements. His client would be open to discussion regarding the banner sign.

Ms. Back asked Mr. Adams if the entire building is a supermarket or if it is like a mall with different tenants. Mr. Adams stated that by what he has seen it is just a grocery store but he has not gone inside toward the rear of the store.

Mr. Phil Baker came forward and stated there are other businesses because it was strip mall. There was a Dollar General but it moved. There is a Walgreens, a Subway, and O'Reilleys store is on the opposite end. Ms. Back Mr. Baker if their signage is on the building as well. Mr. Baker answered affirmatively.

Comments and Questions:

Ms. Back stated that even if the client were advertising products within the store she would have a difficult time with the square footage of the signage. Ms. Back stated that she cannot support this request.

Mr. Van De Wiele stated that it is obvious the client is advertising something other than just a grocery store, and if that is the case the 225 square feet would be sufficient advertising for the grocery store. Mr. Van De Wiele stated that he does not see a hardship for the Variance plus the fact there is unauthorized signage in place already.

Board Action:

On **MOTION** of **BACK**, the Board voted 4-0-0 (Back, Flanagan, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Bond absent) to **DENY** the request for a Variance of the permitted display surface area for wall signs in the CS District to 541.72 square feet (Section 60.080) finding no hardship for the Variance and unauthorized signage; for the following property:

BEG 231.25W & 75S NEC NE TH W34 N10 W385.05 S225 CRV LF 67.55 SE370 CRV LF 77.58 SE202.04 TO NWLY R/W I-44 TH NE ALG R/W 378.65 TO PT 80W EL NE TH N150 W50 NW240.13 ELY59.99 NW193.58 POB SEC 7 19 14 7.411ACS, City of Tulsa, Tulsa County, State of Oklahoma

22145—Charles D. Cahill, PLS 1470

Action Requested:

Variance of the minimum street frontage from 50 feet to 32.65 feet to permit a lot-split (Section 15.030-A). **LOCATION:** 2931 East Apache Street North **(CD 1)**

Presentation:

Charles Cahill, 7060 South Yale, Suite #603, Tulsa, OK; no formal presentation was made by the applicant but he was available for questions from the Board.

Mr. Van De Wiele asked Ms. Miller to summarize what was determined by alleys, streets, etc. Ms. Miller deferred to Ms. Moyer. Ms. Moyer stated that comments were sent to the City of Tulsa, however, at this point no comments have been returned. The City Legal Department did provide recommendations and comments based on what they consider to be frontage which is included in the case report.

Mr. Van De Wiele asked Mr. Cahill if he had learned anything different since his appearance before the Board two weeks ago. Mr. Cahill stated the property to the north does not abut a road and he is not asking anything more than the abutting owner. He would like to be approved for 32.65 feet down from the 50 foot street frontage requirement. The hardship in this case is that the existing parking lot for the front building will be used as an access and that would mean losing about 60 parking spaces. The road does abut the subject property but it does not have the required 50 feet.

Mr. Van De Wiele asked Mr. Cahill if the portion of the alleyway is paved. Mr. Cahill stated that it is paved but is in disrepair.

Mr. Van De Wiele stated that what he is hearing from City Legal is that an alley is not a public street for purpose of meeting the requirements of the frontage for a lot split. In his estimation that provides a hardship. The fact that the landowner has a publically dedicated alleyway that provides more than the 50 foot of frontage plus 29th Street North has been used in the past.

Ms. Back stated that she does not agree because it is an alleyway. She does not think the hardship stated by Mr. Van De Wiele is a hardship that can be justified. An alley by definition is not a street or street frontage. Even though it has been used historically for years and years does not mean that it is correct or right, it just means that they have been making it work. Ms. Back stated that she cannot support the request.

Mr. Cahill stated the property does front the road for the end of 29th Street North but the property is shy of the 50 foot requirement thus the Variance request.

Mr. Flanagan stated that he does not have an issue with this request and could support it.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **FLANAGAN**, the Board voted 3-1-0 (Flanagan, Van De Wiele, White "aye"; Back "nay"; no "abstentions"; Bond absent) to **APPROVE** the request for a **Variance** of the minimum street frontage from 50 feet to 32.65 feet to permit a lot-split (Section 15.030-A). 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:

A tract of land being a part of the East Half of the Southwest Quarter of the Southeast Quarter (E/2-SW/4-SE/4) of Section Twenty (20), Township Twenty (20) North, Range Thirteen (13) East of the Indian Meridian, Tulsa County, State of Oklahoma, according to the U.S. Government Survey thereof, being more particularly described as follows: Commencing at the Southeast Corner of the E/2 of the SW/4 of the SE/4 of Section 20; THENCE North 00°05'00" West along the East line of the E/2 of the SW/4 of the SE/4 of Section 20 a distance of 50.00 feet to the "POINT OF BEGINNING"; THENCE North 90°00'00" West along a line that is 50.00 feet measured perpendicularly from the South line of the E/2 of the SW/4 of the SE/4 of Section 20 a distance of 208.32 feet; THENCE North 00°00'00" East and perpendicularly to the South line of the E/2 of the SW/4 of the SE/4 of Section 20 a distance of 248.00 feet; THENCE North 90°00'00" West parallel with the South line of the South line of the E/2 of the SW/4 of the SE/4 of Section 20 a distance of 244.08 feet; THENCE North 00°08'08" West parallel with the West line of the E/2 of the SW/4 of the SE/4 of Section 20 a distance of 599.19 feet; THENCE North

89°51'52" East a distance of 72.08 feet; THENCE North 00°08'08" West parallel with the West line of the E/2 of the SW/4 of the SE/4 of Section 20 a distance of 425.00 feet to the North line of the E/2 of the SW/4 of the SE/4 of Section 20; THENCE North 89°57'24" East along the North line of the E/2 of the SW/4 of the SE/4 of Section 20 a distance of 380.89 feet to the Northeast corner of the E/2 of the SW/4 of the SE/4 of Section 20; THENCE South 00°05'00" East along the East line of the E/2 of the SW/4 of the SE/4 of Section 20 a distance of 1272.65 feet to the "POINT OF BEGINNING." (This tract was created by part of the leftover portions of Warranty Deed recorded in Book 6974 at Page 35 after executing Special Warranty Deed recorded in Book 6148 at Page 982 of the Tulsa County Records, but not described by metes-and-bounds to date), City of Tulsa, Tulsa County, State of Oklahoma

NEW APPLICATIONS

22149—Jason Gibson

Action Requested:

Variance of the rear yard setback from 25 feet to 14 feet to permit a covered outdoor patio (Section 5.030-A). **LOCATION:** 2134 East 27th Street South (CD 4)

Presentation:

Jason Gibson, Austin Bean Design Studio, 409-B East 8th Street, Tulsa, OK; stated the request is for a covered outdoor patio. The roof for the patio would be an extension of the previously permitted roofline of the house. The patio will be 11 feet into the setback and it will be 14 feet away from the rear property line and 9 feet away from the existing utility easement.

Mr. White asked Mr. Gibson if he had spoken with the neighbors behind the subject property. Mr. Gibson stated that he had not.

Mr. Van De Wiele asked Mr. Gibson to state the hardship for granting the Variance. Mr. Gibson stated there is a permitted remodel and addition to the existing house which is currently under construction. By adding to the house the rear yard has been narrowed so the home owners would like to have an outdoor covered space. The rest of the back yard is under a different permit for landscaping and a pool area. The home owners would like to continue to have an outdoor space which they previously had and this patio would allow that.

Interested Parties:

Jim Langdon, 2117 Forest Boulevard, Tulsa, OK; stated he lives behind and east of the subject property. The neighborhood enjoys the open park like setting that is in Forest Hills which includes both the front and back yards. These are estate sized lots

and his concern is the size of the structure, how it would change the beauty of the back yard because his family room window view will be dominated by the proposed structure, and how it will degrade the property value that is now enjoyed.

Laura Gonsalves, 2105 Forest Boulevard, Tulsa, OK; stated she lives on the corner. She has the same concerns as Mr. Langdon.

Rebuttal:

Mr. Jason Gibson came forward and stated that he was aware of the neighbors concerns as the home owners were going through the initial design process. In an attempt to lessen those concerns the home owners chose to stay back farther than they could have, and they stayed with the lower roof which has been approved.

Mr. Van De Wiele asked Mr. Gibson if the new roofline was the higher than, lower than or the same as the existing roofline of the main part of the house. Mr. Gibson stated the new roofline is the same height as the first story of the house. The ridge height is 12'-2" and there is a new rear fence which is eight feet in height with a stone base. The 12 foot height is set back from the fence 14 feet and with an 8 foot fence the 4 foot difference is not necessarily seen from any neighboring houses.

Comments and Questions:

Mr. White stated that he can appreciate Mr. Langdon's comments about the openness of the yards but he looks at the property there is a large circular drive on the west side, a pool complex on the east side, and this is in essence filling the space in between.

Ms. Back stated that she is having a hard time getting past the hardship.

Mr. Van De Wiele this case seems to be one that the applicant should be getting together with the neighbors in the rear with conceptual plans, designs, elevations or something which the Board does not even have. Mr. Van De Wiele also stated he needs to know what the hardship is because wanting an addition is not a hardship that the Board can act upon. If the Board were to act today he does not think there is enough presented to make decision. Mr. Van De Wiele thinks a continuance to November 8th to allow the applicant and the neighbors to meet, and allow time for the applicant to come up with a hardship.

Board Action:

On **MOTION** of **FLANAGAN**, the Board voted 4-0-0 (Back, Flanagan, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Bond absent) to **CONTINUE** the request for a **Variance** of the rear yard setback from 25 feet to 14 feet to permit a covered outdoor patio (Section 5.030-A) to the November 8, 2016 Board of Adjustment meeting; for the following property:

ALL LT 7 & LT 8 LESS BEG SWC TH E3.5 NLY TO PT 127.6S & 3.8E NWC LT 8 NLY TO PT 102.1S & 2.4E NWC LT 8 WLY2.4 WL S POB BLK 6, FOREST HILLS, City of Tulsa, Tulsa County, State of Oklahoma

22150—Eller & Detrich – Lou Reynolds

Action Requested:

Variance to permit part of the maneuvering and drive area of the required off-street parking area to be located in an easement on an abutting lot to the north (Section 55.080-A); Variance of the required front setback from 30 feet to 25 feet to permit an enclosed entryway in the RS-2 District (Section 5.030-A). **LOCATION:** 2251 South Rockford Avenue East **(CD 4)**

Presentation:

Lou Reynolds, 2727 East 21st Street, Tulsa, OK; stated he represents Max and Laura Mantooth who recently purchased the subject property. Mr. Reynolds stated that the second Variance request regarding the front setback can be met with administrative relief under the new Code so he is withdrawing the second Variance request at this time. On the east side of Rockford almost all of the lots have 50 feet of frontage and RS-2 has a 75 foot frontage. Interestingly the subject property and the lot to the north they are both 75 feet because they are a lot and a half because the two home owners purchased the lot between the two houses and split that lot. The subject property shares a driveway with the house to the south and they have an agreement to purchase an easement for 12'-6". The existing house is approximately 18 feet from the north edge of the easement. The home owners are also in the process of negotiating the right of first refusal to purchase the neighboring house. All the lots were platted in 1923 and on the west side of Terwilleger all the lots are 75 and 100 foot lots which makes for an interesting mix. Mr. Reynolds presented sketches on the overhead projector of the proposed house. Mr. Reynolds stated the hardship is the age of the neighborhood which dates back to 1923, the size of the lots and the additional 25 feet from the existing house to the north and the subject house. The plans are to raze the existing house and build a new one with a detached garage in the rear with a shared driveway for access. This is an unusual situation with the 75 foot lots and they have been in existence for a long time.

Mr. Van De Wiele asked Mr. Reynolds if he understood correctly that the driveway would be a shared driveway. Mr. Reynolds answered affirmatively.

Mr. Swiney asked Mr. Reynolds how close his clients were to finalizing the driveway easement. Mr. Reynolds stated that it is being negotiated and what the Board has before them is a draft of it. Mr. Swiney asked Mr. Reynolds if he thought it would go through. Mr. Reynolds answered affirmatively. Mr. Swiney asked Mr. Reynolds if the easement agreement would be recorded once it is finalized. Mr. Reynolds answered affirmatively pending this Board's approval.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **FLANAGAN**, the Board voted 4-0-0 (Back, Flanagan, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Bond absent) to **APPROVE** the request for a Variance to permit part of the maneuvering and drive area of the required off-street parking area to be located in an easement on an abutting lot to the north (Section 55.080-A), subject to the conceptual plan submitted today. The approval is also subject to the recordation of the driveway easement. 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:

S1/2 LT 8 ALL LT 9 BK 3, TERWILLEGGER HGTS, City of Tulsa, Tulsa County, State of Oklahoma

OTHER BUSINESS

None.

NEW BUSINESS

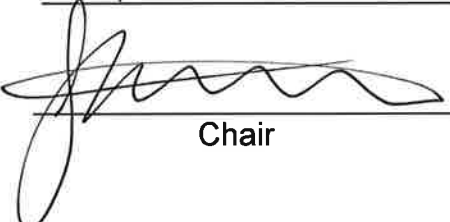
None.

BOARD MEMBER COMMENTS

None.

There being no further business, the meeting adjourned at 3:38 p.m.

Date approved: 11/8/16


Chair