

CITY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1000
Tuesday, April 28, 2009, 1:00 p.m.
Tulsa City Council Chambers
One Technology Chamber
175 East 2nd Street

**MEMBERS
PRESENT**

Henke, Chair
Stead, Vice Chair
Stephens
Tidwell, Secretary
White

**MEMBERS
ABSENT**

**STAFF
PRESENT**

Alberty
Butler

**OTHERS
PRESENT**

Boulden, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Thursday, April 23, 2009, at 11:25 p.m., as well as at the Office of INCOG, 201 W. 5th St., Suite 600.

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

Mr. Alberty read the rules and procedures for the Board of Adjustment Public Hearing.

MINUTES

On **MOTION** of **Tidwell**, the Board voted 5-0-0 (White, Henke, Stead, Tidwell, Stephens "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** the Minutes of April 14, 2009 (No. 999).

UNFINISHED BUSINESS

Case No. 20889

Action Requested:

Variance of the parking requirement for a commercial shopping center (Section 1211-14 & 19); a Special Exception to permit a Use Unit 12a use (night club) within 150 ft. of R zoned land (Section 701); and a Verification of the spacing requirement for an adult entertainment establishment from an R district, church, school, park, and another adult entertainment establishment (Section 1212.a.C.3); to permit a

night club in an existing commercial center, located: Southeast corner of East 61st Street and South Memorial Drive.

Presentation:

Justin Dixon, 3132 East 143rd Street South, Bixby, Oklahoma, 74008, stated the distance from the public entrance door to the nearest residential district is 300 ft. or more (Exhibit A-1). He stated the hours of operation for this establishment would be different for the three different venues. He indicated the hours of operation for the night club would be Wednesday through Sunday 8:00 p.m. to 2:00 a.m.; the restaurant Tuesday through Sunday 11:00 a.m. to 11:00 p.m.; and the sports bar Wednesday through Sunday, 5:00 p.m. to 2:00 a.m.

Comments and Questions:

Ms. Stead verified there would not be a conflict of hours with other businesses for parking.

Board Action:

On **Motion** of **Stead**, the Board voted 5-0-0 (White, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a Variance of the parking requirement for a commercial shopping center (Section 1211-14 & 19); *a Special Exception to permit a Use Unit 12a use (night club) within 150 ft. of R zoned land (Section 701)*; and **ACCEPT** a Verification of the spacing requirement for an adult entertainment establishment from an R district, church, school, park, and another adult entertainment establishment (Section 1212.a.C.3); to permit a night club in an existing commercial center; finding the variance of the parking is made based on the current proposed hours and the other entities on page 2.11 of the agenda; the proposed hours for the club, 8:00 p.m. to 2:00 a.m., restaurant 11:00 a.m. to 11:00 p.m, and sports bar 4:00 p.m. to 11:00 p.m.; finding this use does not conflict greatly and is not unnecessarily a burden to the shopping center parking; finding the verification of spacing as shown on page 2.7 of the agenda; and based upon the facts in this matter as they presently exist, we accept the applicant's verification of spacing for the proposed adult entertainment establishment subject to the action of the Board being void should another adult entertainment establishment or other conflicting use be established prior to the expansion of this adult entertainment establishment; finding these extraordinary or exceptional conditions or circumstances as described being the hours of operation for the various entities, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; and 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, on the following described property:

LT 1 BLK 1, SOUTHEAST SQUARE, City of Tulsa, Tulsa County, State of Oklahoma

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Case No. 20898

Action Requested:

Variance of the required parking for a commercial shopping center (Section 1211 - 14); a Special Exception to permit a Use Unit 12a use (bar) within 150 ft. of R zoned land (Section 701); and a Verification of the spacing requirement for an adult entertainment establishment from an R district, church, school, park, and another adult entertainment establishment (Section 1212.a.C.3); to permit the expansion of an existing bar in the CS district, located: 12630 East 31st Street.

Presentation:

Steve Coble, 108 East Juno, Broken Arrow, Oklahoma, stated he has spoken with neighbors since the hearing on April 14, 2009.

Interested Parties:

Ken Barton, 2641 South El Paso Street, Broken Arrow, Oklahoma, stated he met with Mr. Coble regarding inappropriate use of the alley by customers, fire safety, and poor lighting. He indicated he did not have confidence that the applicant followed through with all of the items that concerned him. He was not in support.

John Ridley, 12631 East 31st Place, Broken Arrow, Oklahoma, noted the applicant put lights in the alley. He expressed concern that Mr. Coble would not follow through with the items of concern. He would only be in support if he met the conditions for a back door alarm and good lighting in the alley.

Applicant's Rebuttal:

Mr. Coble responded that he had talked with the Fire Marshall. He stated that his rear door chimes when it opens and he put up lights in the alley.

Comments and Questions:

Ms. Stead informed Mr. Coble that it is the property owner's responsibility to obtain the proper building permits. She asked Mr. Boulden to speak to the code regarding non-conformity. Mr. Boulden replied that a non-conforming bar loses that non-conformity when it is enlarged. Mr. White questioned if this property was non-conforming. Mr. Boulden stated if it is not, then it has to conform to all of the other provisions of the code.

Board Action:

On **Motion** of **Stead**, the Board voted 5-0-0 (White, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a Variance of the required parking for a commercial shopping center (Section 1211 - 14), from 112 spaces to the existing 73 spaces; a Special Exception to permit a

Use Unit 12a use (bar) within 150 ft. of R zoned land (Section 701), this special exception will expire two years from today's date, April 28, 2009, at which time the property owner must return for re-evaluation; and **ACCEPT** a Verification of the spacing requirement for an adult entertainment establishment from an R district, church, school, park, and another adult entertainment establishment (Section 1212.a.C.3); to permit the expansion of an existing bar in the CS district; finding the business next door, specifically Meals on Wheels, have agreed to let this bar use their parking facilities, as the Meals on Wheels closes at 11:00 a.m.; finding this is an unusual and exceptional circumstance, peculiar to this commercial center, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; and based upon the facts in this matter as they presently exist, we accept the applicant's verification of spacing for the proposed adult entertainment establishment subject to the action of the Board being void should another adult entertainment establishment or other conflicting use be established prior to the expansion of this adult entertainment facility; and in granting the special exception, it 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; and add an alarm system on any rear exit doors to deter use of the alley; all lighting in the alley must be consistent and replaced when needed; on the following described property:

LT 1 BLK 1, DORTHY JEAN ADDN, City of Tulsa, Tulsa County, State of Oklahoma

NEW APPLICATIONS

Case No. 20900

Action Requested:

Special Exception to permit tent sales (Garden and plant related supplies) in the OH district (Section 601); and a Special Exception to permit an alternative off-street parking material (Section 1202.C.1), located: Southwest corner of South Utica Avenue and East 14th Street.

Presentation:

Craig Bay, 8988 South Sheridan, was before the Board to present the case. A plan was included in the agenda (Exhibit B-1).

Comments and Questions:

Ms. Stead asked about the alternative parking material. Mr. Bay replied it is gravel. She understood there is access from Troost. Mr. Bay did not think so, just Utica and 14th Street.

Interested Parties:

Gary Higgins, 1422A South Troost Avenue, Tulsa, Oklahoma, expressed concern for the access points, dust, traffic, hours of operation and lighting.

Chip Atkins, 1638 East 17th Place, Tulsa, Oklahoma, listed questions regarding air quality, tent use, security, and time limit of approval.

Applicant's Rebuttal:

Mr. Bay responded that the hours would be 9:30 a.m. to dusk, Monday through Saturday and 10:00 a.m. to 6:00 p.m. on Sunday. He stated they put up lights inside the tent but none outside of the tent.

Board Action:

On **Motion** of **Stead**, the Board voted 5-0-0 (White, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a Special Exception to permit tent sales (Garden and plant related supplies) in the OH district (Section 601); and a Special Exception to permit an alternative off-street parking material (Section 1202.C.1), approval limited to five years from April 28, 2009; parking and tent area graveled over existing dirt; place a barrier or other obstruction to prevent access from this site to Troost; hours of operation 9:30 a.m. to dusk and or dark; per plan as shown on page 4.6 of the agenda, finding these Special Exceptions 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, on the following described property:

LTS 1 THRU 4 & E10 VAC ALLEY ADJ ON W LESS BEG SECR LT 4 TH W7.41 NW179.73 NW29.71 E38 S200 POB BLK4 , LT 5 & E10 VAC ALLEY ADJ ON W LESS PRT LT 5 BEG NEC W7.41 SELY50.06 TO PT ON SL E4.88 TO SECR N50 POB BLK 4 , LT 6 & E10 VAC ALLEY ADJ ON W LESS PRT LT 6 BEG NEC W4.88 SELY50.06 TO PT ON SL E2.34 TO SECR N50 POB BLK 4 , LAKE VIEW ADDN, City of Tulsa, Tulsa County, State of Oklahoma

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Case No. 20901

Action Requested:

Variance of the 25 ft. rear yard requirement in the RS-2 district to 18 ft. (Section 403) to permit the reconstruction of a garage/building, located: 2130 South Owasso Avenue.

Presentation:

John Duvall, 1820 South Boulder Avenue, Suite 301, Tulsa, Oklahoma, 74119, architect for the project, stated his client proposed to replace a one and a half-story two-car garage with a new one and a half-story, two-car garage, with guest quarters above. The new garage would be attached to the existing house and moved approximately twenty feet forward from the location of the existing garage.

The homeowner intends to maintain the architectural character of the existing home and character of the neighborhood. He pointed out per the site plan (Exhibit C-1), that by moving the garage forward, they could build it by right. He expressed their effort to maintain the relationship of the garage as a secondary element to the overall house, pulling it any further forward would be detrimental to that. The applicant's opinion is that the encroachment is not as detrimental to the public or in violation to the spirit of the code. He is not only the architect but a concerned party, as he lives at 1219 East 21st Place, which is directly east of the project across Owasso Avenue.

Interested Parties:

Nan Dickerson, 1131 East 21st Place, Tulsa, Oklahoma, 74114, stated her family has lived on this street for 21 years. She expressed concern for a change from the characteristic detached garage, as the rest of the neighborhood.

Sally Davies, 2700 South Boston, Tulsa, Oklahoma, 74114, stated she is the Maple Ridge Neighborhood Association representative on the Tulsa Preservation Commission. She stated they protest this variance. Ms. Stead asked if the association has taken a vote at a regular meeting. Ms. Davies replied that they have not. Ms. Stead reminded her that she cannot speak for the whole association in that case. She asked if Ms. Davies has read the architect's letter. Ms. Davies replied she had not read the letter, but that she could see they were trying to pull it forward too much and attach it to the house. She felt it would still be better to leave it as it is.

Comments and Questions:

Mr. Duvall submitted a set of renderings (Exhibit C-2), and letters to the neighbors, including Ms. Dickerson. He indicated the hardship is the configuration of the lot and the encroachment is only a small triangle. He added that the existing garage is in disrepair and essentially falling down. He pointed out the only structure between the house and garage is a hall and stairs, and no other rooms. It is very close to the existing square footage.

Board Action:

On **Motion of Stead**, the Board voted 4-1-0 (White, Stephens, Stead, Tidwell "aye"; Henke "nay"; no "abstentions"; no "absences") to **APPROVE** a Variance of the 25 ft. rear yard requirement in the RS-2 district to 18 ft. (Section 403) to permit the reconstruction of a garage/building, per plan on page 5.7, as shown in the agenda packet, finding the rear property line is not parallel with the front property line, which is East 21st Place South, resulting in a greatly reduced yard in the southwest corner of the property, where the existing and proposed garage are located, the new design improves on the existing garage by moving the garage forward on the lot and yet maintaining the established architectural precedent in the surrounding neighborhood, thereby respecting the intent of the zoning ordinance; it is also stated in the March 18, 2009 letter presented to the Board, that the architectural vocabulary prevalent in the neighborhood of the garage will be

maintained; finding in granting the variance, these are extraordinary or exceptional conditions or circumstances which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan, the following described property:

LOT 9 & 10 BLK 13, SUNSET PARK AMD, City of Tulsa, Tulsa County, State of Oklahoma

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Case No. 20902

Action Requested:

Verification of the spacing requirement for an outdoor advertising sign of 1,200 ft. from another outdoor advertising sign on the same side of the highway (Section 1221.F.2) and a Verification of the spacing requirement for a digital outdoor advertising sign of 1,200 ft. from any other digital outdoor advertising sign facing the same traveled way (Section 1221.G.10), located: South of the Southwest corner of Highway 75 and East 81st Street.

Presentation:

Lorenda Elizando, 7777 East 38th Street, Tulsa, Oklahoma, 74145, was present having submitted verification of spacing for an advertising sign.

Interested Parties:

There were no interested parties who wished to speak.

Board Action:

On **Motion** of **White**, the Board voted 5-0-0 (White, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **ACCEPT** the Verification of the spacing requirement for an outdoor advertising sign of 1,200 ft. from another outdoor advertising sign on the same side of the highway (Section 1221.F.2) and a Verification of the spacing requirement for a digital outdoor advertising sign of 1,200 ft. from any other digital outdoor advertising sign facing the same traveled way (Section 1221.G.10), based upon the facts in this matter as they presently exist, subject to the action of the Board being void should another outdoor advertising sign be constructed prior to these signs, on the following described property:

PRT SW NW BEG 50E SWC SW NW TH N770.92 E570 N555 E367.96
SLY277.10 SLY67.47 CRV RT993.08 W784.6 TO POB, City of Tulsa, Tulsa
County, State of Oklahoma

Case No. 20903

Action Requested:

Verification of the spacing requirement for an outdoor advertising sign of 1,200 ft. from another outdoor advertising sign on the same side of the highway (Section 1221.F.2) and a Verification of the spacing requirement for a digital outdoor advertising sign of 1,200 ft. from any other digital outdoor advertising sign facing the same traveled way (Section 1221.G.10), located: 5634 South 107th East Avenue.

Presentation:

Lorenda Elizando, 7777 East 38th Street, Tulsa, Oklahoma, 74145, was present having submitted verification of spacing for an advertising sign.

Interested Parties:

There were no interested parties who wished to speak.

Board Action:

On **Motion** of **White**, the Board voted 5-0-0 (White, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **ACCEPT** a Verification of the spacing requirement for an outdoor advertising sign of 1,200 ft. from another outdoor advertising sign on the same side of the highway (Section 1221.F.2) and a Verification of the spacing requirement for a digital outdoor advertising sign of 1,200 ft. from any other digital outdoor advertising sign facing the same traveled way (Section 1221.G.10), based upon the facts in this matter as they presently exist, subject to the action of the Board being void should another outdoor advertising sign be constructed prior to this sign, on the following described property:

LT 6 LESS BEG SWC THEREOF TH E297.97 N161.47 W297.37 S161.46 POB
BLK 2, GOLDEN VALLEY, City of Tulsa, Tulsa County, State of Oklahoma

Case No. 20904

Action Requested:

Verification of the spacing requirement for a liquor store from blood banks, plasma centers, day labor hiring centers, bail bond offices, pawn shops, and other liquor stores (Section 1214.C.3), located: 207 Mohawk Boulevard.

Presentation:

Rico Brown, 5109 North Utica Avenue, Tulsa, Oklahoma, 74130, was present for the applicant, having submitted a verification of spacing for a liquor store.

Interested Parties:

There were no interested parties who wished to speak.

Board Action:

On **Motion** of **White**, the Board voted 5-0-0 (White, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **ACCEPT** a Verification of the spacing requirement for a liquor store from blood banks, plasma centers, day labor hiring centers, bail bond offices, pawn shops, and other liquor stores (Section 1214.C.3), based upon the facts in this matter as they presently exist, subject to the action of the Board being void should another above referenced conflicting use be established prior to this liquor store on the following described property:

BEG SWC LT 20 BLK 3 DEVONSHIRE PL 4TH TH E150 S133.7 W150 N133.7
TO BEG SEC 24 20 12, City of Tulsa, Tulsa County, State of Oklahoma

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Case No. 20906

Action Requested:

Variance of the 35 ft. required yard abutting an arterial street (Harvard Av.) to 17 ft. (Section 403); to permit a new dwelling, located: 3301 East Archer Street.

Presentation:

J.E. McAlester, Route 6, Box 151, McAlester, Oklahoma, Contractor for the Cherokee Tribe, plan to build a new home (Exhibit D-1). He stated the previous home was demolished. The zoning has changed regarding setbacks and they need a variance to construct the home. He added they are placing the new house where the original house was located, although a little farther away from Harvard. He informed the Board there is a retaining wall around it.

Luby Cole, 1143 South Florence Avenue, Tulsa, Oklahoma, 74104, desired to keep the retaining wall for protection of the property. She stated there have been numerous wrecks at this corner.

Interested Parties:

There were no interested parties who wished to speak.

Board Action:

On **Motion** of **Stead**, the Board voted 5-0-0 (White, Henke Stephens, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a Variance of the 35 ft. required yard abutting an arterial street (Harvard Av.) to 17 ft. (Section 403); to permit a new dwelling, subject to page 9.6 as shown in the agenda packet; finding the new dwelling is the approximate footprint of the original house, which was built in 1945, and the lot was platted 60 ft, wide and 135 ft. deep and does not allow a lot of variance from the previous footprint; finding these

extraordinary or exceptional conditions or circumstances which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan, on the following described property:

LT 6 BLK 14, HARVARD HILLS, City of Tulsa, Tulsa County, State of Oklahoma

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Case No. 20913

Action Requested:

Special Exception to permit a Governmental Service, Not Elsewhere Classified (Use Unit 2) use in the CBD, to permit a short term reception facility to hold juveniles who have been taken into custody by law enforcement agencies, located: 600 Civic Center.

Presentation:

Marsha Hinds, 3208 South Toledo, Tulsa, Oklahoma, 74135, stated she is the Lead Engineer for special projects for the City of Tulsa. They were requested to design a Juvenile Center.

Tom Baker, 1323 East 19th Street, Tulsa, Oklahoma, 74120, stated he was present as the Chairman of the Community Intervention Advisory Board. They represent Owasso, Jenks, Broken Arrow and others for the law enforcement community. They asked for support of this intervention center, the ninth in the state of Oklahoma. This is for juveniles that have violated some city ordinance or state statute, but do not warrant detention. They could be held only up to 24 hours, and must be released to a parent or approved guardian. The goal of this process is to provide counseling for the child and parents to stop the course of events that could lead to criminal activity and help them change the direction of their lives. The state requires that such a facility be located close to a law enforcement facility. The space is available next to the Tulsa Police Department.

Interested Parties:

Renee Reed, 616 West 7th Street, Tulsa, Oklahoma, 74127, Director of Operations for the Doubletree Hotel, expressed concern that this site is in a direct footpath to the Bank of Oklahoma Arena. She asked for entrance and exit to the facility so that the public would not be subject to any unruly behavior by the juveniles.

Ms. Stead asked Mr. Baker to respond.

Mr. Baker replied that another reason this site was selected was because it has a secure entrance on the south side of the building hidden from 6th Street. The only

public access will be from an existing parking lot. That entrance will be for the family members of a juvenile in the facility.

Board Action:

On **Motion** of **Stead**, the Board voted 5-0-0 (White, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a Special Exception to permit a Governmental Service, Not Elsewhere Classified (Use Unit 2) use in the CBD, to permit a short term reception facility to hold juveniles who have been taken into custody by law enforcement agencies; subject to holding no more than 15 juveniles at the facility at any given time; individual juveniles will not be held for more than 24 hours in the facility; juveniles will only be released to a parent or legal guardian; the facility shall have no less than two security staff present at all times; in granting the special exception this approval cannot be construed so as to permit future dissimilar detention facilities in the subject building; and finding the legal description and the facility to be used is confined to an area immediately surrounding the subject building and does not include other portions of the civic plaza; in granting the special exception the Board finds it 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, per conceptual plan as shown on page 10.6.

On **Amended Motion** of **Stead**, the Board voted 5-0-0 (White, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a Special Exception to permit a Governmental Service, Not Elsewhere Classified (Use Unit 2) use in the CBD, to permit a short term reception facility to hold juveniles who have been taken into custody by law enforcement agencies; subject to holding no more than 30 juveniles at the facility at any given time; individual juveniles will not be held for more than 24 hours in the facility; juveniles will only be released to a parent or legal guardian; the facility shall have no less than two security staff present at all times; in granting the special exception this approval cannot be construed so as to permit future dissimilar detention facilities in the subject building; and finding the legal description and the facility to be used is confined to an area immediately surrounding the subject building and does not include other portions of the civic plaza; in granting the special exception the Board finds it 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, on the following described property:

W/2 BLK 153 & VAC FRISCO AV ADJ ONW, TULSA-ORIGINAL TOWN, City of Tulsa, Tulsa County, State of Oklahoma

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OTHER BUSINESS

Mr. Henke recused himself from discussion of the City Council Consensus at 2:43 p.m.

Opening Comment:

Ms. Stead stated the Board did not have a case to be considered. She also stated the City Council gave this Board the latitude to use a facility as an illustration. She asked the Board for a consensus that they could not hear whether the public wants a bar or an extension in their neighborhood. She added that if an interested party speaks about the code as it would apply to a generic facility, she was open to hear it.

Mr. Stephens commented that there needs to be a change to the zoning for Brookside and the Cherry Street area. He believes it needs to be more form-based and something along the lines of a CBD.

Mr. Tidwell was in agreement with Ms. Stead.

Mr. White agreed with Ms. Stead and added that if they considered a specific location as an example it could conceivably prejudice the Board should that location ever come before the Board. He requested Ms. Stead read the request from the City Council, so the public could understand specifically.

Section 1.

The City Council requests the Board of Adjustment to review 42 T.R.O. §1212a (C)(4) and provide the City Council its interpretation as to whether a roof top outdoor seating area meets the criteria established in 42 T.R.O. §1212a (C)(4), for the determination of required parking. (The Board of Adjustment may want to utilize the facts surrounding Lounge 3340, Inc. for illustrative purposes.)

Section 2.

The City Council requests the Board of Adjustment provide its interpretation of whether and under what circumstances a property owner may utilize outdoor seating areas (street level or elevated), under 42 T.R.O. §1212a (C)(1), and specifically the purpose and intent of the requirement that an "outdoor customer seating area shall abut the building wall of the business, but extend no closer to the street than the building setback requirements."

Ms. Stead added one more thing to Mr. White's statement. She stated if this Board heard any facts on a particular property at this meeting, she believed it would be setting a precedent for any future action that might come from a specific property. She thought it would be unfair and perhaps influence any other action by a lawful body. She asked speakers to limit their comments to the zoning code only.

Comments:

Paul Enix, Sr. Code Official, City of Tulsa, stated a plan review on this type of project is straight-forward. The review is to see if the plans are in compliance with the text of the zoning code. If they meet the requirements they are approved, otherwise they search for the adjustments that will bring it into compliance. He added that one item they look for in an outdoor customer seating area for an adult entertainment establishment is whether it abuts a building wall. Abut means 'contiguous or adjoining' a building wall.

Ms. Stead noted that the definition of 'word' in the zoning code refers to simplicity. She pointed out in Section 18, which says, "For the purpose of this code one word shall be deemed any of the following, any word in any language found in any standard, unabridged dictionary, or dictionary slang". She considered that to mean you take the most simplistic interpretation of the word.

Mr. Enix stated he did not find the definition of wall in the code, but he discovered examples of other ways it is used, such as, building wall, and street wall. A street wall is defined as the wall for the part of the building nearest to the street line. Mr. Tidwell asked if there was no definition for a parapet wall in the code. Ms. Stead read the Webster's definition for wall as, "one of the sides of a room or building connecting floor and ceiling or foundation and roof." Webster's New Word on the internet says, "an upright structure of wood, stone, brick, et cetera, serving to enclose, divide, support or protect, specifically such a structure forming a side or inner partition of a building." Mr. Enix points out the example of, "the building setback", which is "the horizontal distance from the point of measurement such as the centerline of an abutting street or the boundary line of an abutting zoning district to the nearest building wall." Ms. Stead sought agreement that to have outdoor seating, you must first have a wall.

Ms. Stead noted the next requirement would be, whether or not if an outdoor seating were approved, is it more or less than 10% of the floor area of the principal building. Mr. Enix agreed that is correct. She then concluded that if it is more than 10% of the floor area, it would require additional parking. Mr. Enix encouraged the Board to stick to the term building wall, as there could be exceptions, such as when there is a separate façade to an exterior building wall.

Mr. Boulden concluded that what he referred to the outer portion of the wall as opposed to that which would face the inside of the area confined by walls. Mr. Enix replied that it would probably be, as opposed to an interior partition. Mr. Boulden asked if he makes reference to exterior wall, he is really referring to the outer wall. He added that obviously, both sides on a roof, both are outside or exterior. Mr. Enix responded if a wall extends above a roof line, then the whole wall is exterior.

Mr. Boulden stated the Board is asked how to interpret the code regarding a roof-top outdoor seating area. He asked Mr. Enix if he has had an occasion to apply

this provision to an outdoor seating area on a roof. Mr. Enix stated they have an application for one on a roof and they had one application that was approved in 2002 for a balcony level at the level of the first floor roof. He asked Mr. Enix how they applied this provision of the code that requires it abut a building wall and be no closer to the street than the building setback. Mr. Enix replied that he did not see anything in the code that addresses the elevation. He stated there could be a sloping ground and the actual elevation of the seating area is higher than the floor of the establishment, because the ground slopes in that direction. They have approved one when it was off of a penthouse level, as a balcony. He pointed out the wording does not require it to be at grade level, so they see if it meets the requirement for abutting the building wall. Mr. Boulden asked how they determine the abutting of a building wall. Mr. Enix replied that both cases showed the location of the seating area right up against the building wall. Mr. Boulden asked if they were roof-top or just elevated. Mr. Enix responded they were elevated. Mr. Boulden asked if they have developed a purpose and intent of the code provision that it requires it abut a wall and be no closer than to the street than the building setback. He asked how they would apply that in trying to comply with the spirit and intent of the code. Mr. Enix replied that in trying to interpret and go with the spirit and intent, one can veer a long way from the text of the code. He prefers to review on the text of the code. If he is unable to make it meet the text of the code, he would go to the Board for direction. Mr. Boulden asked how a roof-top seating area could comply with this provision of the code. Mr. Enix replied that if the building wall extends above the roof line and the seating area is against it, then it meets the text of the code. Ms. Stead asked if the walls are very short and someone wants to cover the area with a canopy, is there anything to constitute a wall in height. Mr. Enix did not know of any height measurement. Mr. White asked if the balcony seating area was against a full-story wall. Mr. Enix replied it abutted a penthouse above the roof line.

Barbara Pinney, 1326 East 32nd Place, Tulsa, Oklahoma, 74115, referred to the phrase, "shall abut a building wall". She determined that abutting the building wall does not include a parapet. She stated that does not prevent roof-top seating, it just means it will require more parking.

Herb Beattie, 3474 South Zunis, Tulsa, Oklahoma, 74105, did not think that the zoning code addresses roof-top seating areas. He did not want anyone to set a precedent that these situations would come up without any controls.

Leroy Welborn, 2532 South Owasso, Tulsa, Oklahoma, 74114, expressed concern about setting a precedent, where someone could build a parapet and provide roof-top seating without having to provide additional parking.

Greg Bledsoe, 1717 South Cheyenne, attorney for Herb Beattie, cited Section 1606 permits the Board to give interpretative rulings and advisory interpretation. He did not think a parapet wall is the same as a building wall. He did not think it includes an outside seating area on the roof of the adult entertainment

establishment. The code is specific that certain structures can be added to the outdoor seating area. It lists a tent or a canopy. He indicated the ordinance was intended for the outdoor seating area to be on the same level as the business. He suggested that in affect a business owner would be adding a second story with a permanent non-tent-like canopy, constructing an enclosed restaurant but calling it an outside seating area. He stated that was never intended by the City Council. He considered adding roof-top bars would destroy the livability of such areas near residential districts.

Mr. Boulden asked what purpose is served by restricting outdoor seating areas to a specific level and not a roof. He added it doesn't matter if it does not exceed 10% of the indoor floor area. Mr. Bledsoe stated his opinion is that the public policy decision trade off was made recognizing the inherent geography limitations, that it won't be replicated.

Guy deVerges, 1342 East 35th Place, Tulsa, Oklahoma, 74105, agreed with the points Mr. Bledsoe presented.

Roy Johnsen, 201 West 5th Street, Suite 501, Tulsa, Oklahoma, 74103, encouraged the Board that they could make an advisory opinion as requested by the City Council. He recognized the difficulty, as technology changes and life changes. He noted the code does not specify that outdoor seating cannot be on a roof-top; or that it must be on the ground; and it needs to abut a wall. He pointed out that a parapet is part of a wall. He considered the intent to limit the location in proximity to the principal business and not free-standing. He reminded the Board that the code has provisions to protect the neighborhood from noise. Mr. Boulden asked what the intent of the 10% floor area limitation meant. Mr. Johnsen considered that provision to encourage the outside seating areas within a reasonable limit.

Josh Robie, 919 South Winston, Tulsa, Oklahoma, 74112, was in support of the roof-top seating. He thought this city needs to be creative and consider the desires of the public to encourage growth and not decline.

Karisha Arnett, 6732 East 28th Place, Tulsa, Oklahoma, 74129, was also in support of roof-top venues, and the need for an interpretation. She was in support of the 10% limit and against the abutting wall.

Chip Atkins, 1638 East 17th Place, Tulsa, Oklahoma, 74120, stated the property owners are concerned for the privacy.

Jack Page, 1711 South Detroit Avenue, Tulsa, Oklahoma, Building Official for the City of Tulsa, stated the provisions for parking, for outdoor seating areas abutting the building wall applies to Use Unit 12, 12a and 13. It is not just adult entertainment establishments. It also applies to eating establishments and conveniences. He noted that firewalls sometimes extend above the roof line. He

stated the portion above the roof line is referred to as a parapet, and is still a part of the wall. The same is true of the exterior wall. The code does not refer to the abutting wall as the front wall, side wall or back wall, the inside or the outside of the wall. The intent of the 10% limitation probably has to do with the limited months when an outside seating area would be used because of weather.

James Boswell, 1305 East 15th Street, Tulsa, Oklahoma, stated he is an architect that has done work in the Brookside area. He has heard from numerous neighbors in Brookside that are in support.

Mr. Boulden stated that we need to go with the common or ordinary meaning of terms that are not specifically defined in the code. Zoning is a regulatory activity that is in derogation of property rights that are protected by the constitution. The code should be interpreted in favor of freedom of use of property and the landowner. The code does not specifically prohibit roof-top seating areas. He considers all of the parts of the provision and finds it includes proximity to the indoor business; and does not extend beyond the building setback. He agreed with Mr. Page, that there will be seasonal use of the outdoor seating, so the parking requirements were limited. He suggests that it be stated any interpretation is an advisory interpretation with no force or affect on any particular case.

Comment from the BOA:

The City Council has requested the Board of Adjustment review and interpret Section 1212.a.C.4 of the Tulsa Zoning Code with respect to outdoor customer seating and required parking. At issue is roof-top outdoor seating and whether it complies with the Code requirement: "outdoor customer seating area shall abut the building wall of the business." This request is not an appeal from a determination of an administrative official or a written request of an administrative official in accordance with Section 1606 of the Tulsa Zoning Code. The following responses from the Board are to be considered advisory only to the City Council and not a binding interpretation of the Zoning Code.

BOA Statement to Tulsa City Council

We, the Board of Adjustment, find no specific Tulsa Zoning Code provision for outside roof-top seating; or prohibition of the same; and no precedent for the same. This Board has no jurisdiction over any specific outdoor seating area case at this time. To discuss the merits of a specific case would set a precedent; and could adversely affect any future case heard before the BOA or other legal body.

The Zoning Code states that any outdoor seating area shall abut the building wall of the business. The BOA has approved numerous of these on street level, usually containing an exterior wall of the principal structure. If an application for outdoor seating were before the Board of Adjustment, the Board would first have to verify through a public hearing that the proposed outdoor seating area would abut a wall of the business.

If an outdoor seating area whether street level, roof-top, balcony, penthouse, et cetera, abuts the building wall of the applicant's business, then outdoor seating should be allowed. If a case were before the BOA; the Board would have to verify through a public hearing that outdoor seating areas are allowed: if such exceed 10% of the indoor building floor area, additional parking would be required. If the Board approved an outdoor seating area and such area is 10% or less of the indoor building floor area no additional parking would be required.

On **Motion** of **Stead**, the Board voted 4-0-0 (White, Stephens, Stead, Tidwell "aye"; no "nays"; no "abstentions"; Henke "absent") to **APPROVE** the BOA statement to Tulsa City Council, as shown above.

See Section 1212a of the zoning code.

SECTION 1212a. USE UNIT 12A. ADULT ENTERTAINMENT ESTABLISHMENTS

A. Description. Businesses which cater primarily to adults 21 years of age and above and which sell and serve intoxicating beverages and/or low-point beer (as defined by Oklahoma Statutes) on the premises and all sexually oriented businesses.

B. Included Uses:

Bar/Tavern
Beer Bar
Billiard Parlor/Pool Hall
Night Club
Private Club
Sexually Oriented Business

C. Use Conditions:

1. The uses included in Use Unit 12a, when located on a lot which is abutting an R District shall be screened from the abutting R District by the erection and maintenance of a screening wall or fence along the lot line or lines in common with the R District.
2. Sexually Oriented Businesses shall meet the conditions set forth in Section 705 of this Code.
3. Adult Entertainment Establishments, other than Sexually Oriented Businesses, shall meet the following spacing standards: provided, however, that the spacing standards shall not apply to accessory use bars as defined in this Code:
 - a. Public entrance doors shall be located at least 50 feet from an R District, which shall be measured in a straight line from the nearest point on a residential zoning district boundary line (not including residentially zoned expressway right-of-way) to the nearest public entrance door of the Adult Entertainment Establishment; and

- b. Shall be located a minimum of 300 feet from a public park, school or church, which shall be measured from the nearest point on the property line of a park, school or church to the nearest public entrance door of the Adult Entertainment Establishment measured along the street right-of-way line providing the nearest direct route usually traveled by pedestrians between such points; for purposes of determining measured distance, property situated on the opposite side of the street from such park, school or church shall be considered as if it were located on the same side of the street with the park, school or church; and
 - c. Shall be spaced 300 feet from any other Adult Entertainment Establishment listed in Use Unit 1212a., except in the Central Business District (CBD), which 300 feet shall be measured in a straight line from the nearest point of the wall of the portion of the building in which said business is conducted, to the nearest point of the wall of the portion of the building in which another adult entertainment business is conducted.

Church, as used herein, shall mean all contiguous property owned or leased by a church upon which is located the principal church building or structure, irrespective of any interior lot lines.

School, of the type which offers a compulsory education curriculum, as used herein, shall mean all contiguous property owned or leased by a school upon which is located the principal school buildings(s) irrespective of any interior lot lines.
4. The uses included in Use Unit 12a. shall take place within a completely enclosed building, except outdoor customer seating is permitted, whether uncovered or covered by a tent or canopy, provided:
 - a. The outdoor customer seating area shall abut the building wall of the business, but extend no closer to the street than the building setback requirements;
 - b. The outdoor customer seating area shall not occupy or use required parking spaces or access aisles;
 - c. The outdoor customer seating area exceeding 10% of the indoor building floor area of the principal use shall be considered floor area for purposes of determining off-street parking and loading requirements as set forth herein; and
 - d. Noise from any outdoor entertainment activity shall not be audible from any abutting R. District.
5. All uses included within Use Unit 1212a shall be reviewed by the Board of Adjustment at a public hearing to determine if they comply with all applicable spacing requirements. Notice of the public hearing shall be given as provided in Section 1603 of this code.

D. Off-Street Parking and Loading Requirements

<u>Uses</u>	<u>Parking Spaces</u>	<u>Loading Berths</u>
Bar, Beer Bar, Tavern, Billiard Parlor, Night Club, Pool Hall, Private Club	1 per 75 SF of floor area	1 per 5,000 to 10,000 SF plus 1 per each add'l 15,000 SF of floor area
Sexually Oriented Business:		
Adult Amusement or Entertainment	1 per 75 SF of floor area	1 per 5,000 to 10,000 SF plus 1 per each add'l 15,000 SF of floor area

Motel	1 per room plus 1 per manager	1 per 5,000 to 10,000 SF plus 1 for each add'l 15,000 SF of floor area
Theater	1 per 4 seats or 1 per booth plus 1 per manager	1 per 5,000 to 10,000 SF plus 1 for each add'l 15,000 SF of floor area
All other such uses	1 per 225 SF of floor area	1 per 5,000 to 10,000 SF plus 1 for each add'l 15,000 SF of floor area

Ms. Stead recognized Mr. Bledsoe. He asked for a clarification of a statement by Mr. White regarding roof-top issues. Mr. White stated he does not have a problem with a roof-top entertainment venue as long as they do not adversely affect the surrounding neighborhood. He suggested the City Council have the Planning Commission to recommend an amendment to the zoning code that would provide for the roof-top outdoor seating areas and protect the neighborhood.

On **Motion** of **Stead**, the Board voted 4-0-0 (White, Stephens, Stead, Tidwell "aye"; no "nays"; no "abstentions"; Henke "absent") to **APPROVE** the preparation of a letter to the City Council requesting the Planning Commission to revise Section 1212.a for an amendment to the zoning code, for all outside seating areas covered therein.

Ms. Stead recognized Mr. Johnsen. Mr. Johnsen asked which uses this includes. Ms. Stead replied the units involved would be 12, 12a, 13.

Ms. Stead recognized Mr. Eaton.

Alex Easton, 1335 East 27th Street, Tulsa, Oklahoma, 74114, asked if the Board would state unanimous support of roof-top seating to the City Council. She replied that it would not be appropriate.

Mr. Henke returned at approximately 4:25 p.m.

There being no further business, the meeting adjourned at 4:27 p.m.

Date approved: 5/12/09


Chair

