

CITY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1048
Tuesday, May 24, 2011, 1:00 p.m.
Tulsa City Council Chambers
One Technology Center
175 East 2nd Street

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	OTHERS PRESENT
Henke, Chair		Alberty	Boulden, Legal
Stead		Cuthbertson	
Tidwell, Secretary		Sparger	
Van De Wiele			
White, Vice Chair			

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Thursday, May 19, 2011, at 10:25 a.m., as well as at the Office of INCOG, 2 West Second Street, Suite 800.

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

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

MINUTES

On **MOTION** of **WHITE**, the Board voted 3-0-2 (Henke, Van De Wiele, White "aye"; no "nays"; Stead, Tidwell "abstain") to **APPROVE** the **Minutes** of the May 10, 2011 Board of Adjustment meeting (No. 1047).

NEW APPLICATIONS

21265—Greg Helms

Action Requested

Special Exception to permit a (Use Unit 5) Child Care Center and Church use in the AG district (Section 301); and a Variance to permit Recreational Vehicles parked on the site during construction of the facility to be used for dwelling purposes and to be connected to utilities (Section 302.B.3.b); and a Variance to permit the RV's to be parked on a non-all-weather surface (Section 222).

Presentation:

No presentation was made; the applicant has asked for a continuance to the June 14, 2011 hearing.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **CONTINUE** to June 14, 2011 the request for a Special Exception to permit a (Use Unit 5) Child Care Center and Church use in the AG district (Section 301); and a Variance to permit Recreational Vehicles parked on the site during construction of the facility to be used for dwelling purposes and to be connected to utilities (Section 302.B.3.b); and a Variance to permit the RVs to be parked on a non-all-weather surface (Section 222); for the following property:

A TRACT OF LAND THAT IS PART OF THE SOUTHWEST QUARTER (SW/4) OF SECTION TWENTY-FIVE (25), TOWNSHIP NINETEEN (19) NORTH, RANGE FOURTEEN (14) EAST OF THE INDIAN BASE AND MERIDIAN, TULSA COUNTY, STATE OF OKLAHOMA, SAID TRACT OF LAND BEING DESCRIBED AS FOLLOWS: BEGINNING AT A POINT THAT IS THE SOUTHEAST CORNER OF LOT TWELVE (12), BLOCK THREE (3), STONEGATE, A SUBDIVISION IN THE CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE RECORDED PLAT THEREOF; THENCE SOUTH 01°19'34" EAST ALONG A SOUTHERLY EXTENSION OF THE EASTERLY LINE OF SAID LOT TWELVE (12) FOR 275.00 FEET; THENCE SOUTH 88°40'26" WEST FOR 635.06 FEET TO A POINT ON THE WESTERLY LINE OF SAID SOUTHWEST QUARTER (SW/4); THENCE NORTH 01°19'25" WEST ALONG SAID WESTERLY LINE FOR 275.00 FEET; THENCE NORTH 88°40'26" EAST ALONG THE WESTERLY EXTENSION OF THE SOUTHERLY LINE OF SAID BLOCK THREE (3), STONEGATE, AND ALONG SAID SOUTHERLY LINE OF BLOCK THREE (3) FOR 635.05 FEET TO THE POINT OF BEGINNING OF SAID TRACT OF LAND, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

* * * * *

UNFINISHED BUSINESS

* * * * *

21254—Roy Johnsen

Action Requested:

Variance of the minimum required lot width in the RS-1 district from 100 ft. to 80 ft. (Section 403) to permit lot-splits. **Location:** 2914 East 44th Place South

Mr. White recused himself from the meeting at 1:05 P.M.

Presentation:

Roy Johnsen, 1 West 3rd Street, Suite 1010, Tulsa, OK; stated he represents the landowner, Mrs. Holtzapple. She and her husband purchased the property in 1970. He is deceased; she has moved into another home, and now wants to make a financial return on their investment in this neighborhood. The subject property is zoned RS-1 and the minimum lot width is 100'-0". The subject property has two lots, platted in 1946, and each of the lots are 125'-0" in width. Mrs. Holtzapple is proposing to divide the two lots into three lots. The western lot would be 90'-0" wide x 305'-0" deep with the remaining two lots 80'-0" wide each. A standard RS-1 lot is 100'-0" wide x 135'-0", or a minimum of 13,500 square feet thus making for an unusual depth for the subject property. The western lot area would be 27,450 square feet and 24,400 square feet each for the remaining two lots, if this request were approved. Theoretically the subject property could be divided into five lots and still stay within the density that is permitted in an RS-1 zoned district, and with no question, the subject property could be divided into four lots without a variance request.

Mr. Henke asked Mr. Johnsen if his client was trying to maximize their investment in the subject property, and Mr. Johnsen stated the client would not be maximizing their investment because they have owned the property since 1970 and lived on the property from that time forward, until a short time after Mr. Holtzapple's death. Now Mrs. Holtzapple wants to sell the subject property and thinks dividing the existing lot into three separate lots would make the most sense.

Ms. Stead asked why his client did not want to take the opportunity to divide the subject property into four lots, which would not require any variance requests, instead of the three proposed lots. Mr. Johnsen stated his client thinks it would be a better use of the property, gives an opportunity for someone to purchase the existing home to remodel, and the three lots seem to be more in keeping with the neighborhood. If the subject

property were to be divided into four lots there would be two lots on the north and two lots on the south with a cul-de-sac in the middle.

Mr. Henke asked Mr. Johnsen if the entire lot was being marketed for sale currently. Mr. Johnsen stated the entire property was for sale with hopes of keeping the existing house on the property, that was one of the reasons his client proposed dividing the property into three lots because the house has sentimental value to them.

Mr. Henke asked Mr. Cuthbertson what the hardship was in the previous case that was heard in regards to this property. Mr. Johnsen stated that Mr. White, who was a member of the previous Board, stated the 80'-0" width was acceptable because of the depth of the lot, and the depth of the lot was the hardship which is referenced in the July 14, 1998 minutes for Case No. 18088. The variance was approved by a 3-1-1 vote in that case with the motion made by Mr. Dunham.

Ms. Stead stated that it is not germane whether this Board agrees with another Board's decisions. The fact is the lots are there. Mr. Henke stated that he questioned whether or not there is a valid hardship, and he does not think that using the fact that the lot to the east has the 80'-0" width is a reason to grant a variance today. Mr. Johnsen stated that he bases a lot of what he says to the Board on the past practices of the Board, and the Board does and has taken into consideration what is nearby, how does it fit into the area. Mr. Henke stated that he does not think there is a valid hardship in the case being heard today. Mr. Johnsen stated now the lots to the east are in existence, and the majority of the Board then existing thought that was a hardship; and this Board, over time, has had the practice to take into consideration what is nearby. Mr. Henke stated he would take it into consideration if there was a hardship that was delineated in the minutes.

Ms. Stead stated that this Board, in the last five years, has consistently said that they do not set a precedent because the Board looks at each case on its own merits. Mr. Johnsen agreed, but stated that part of that consideration is what is nearby that might be affected. Ms. Stead asked Mr. Johnsen if he could verify the four lots were configured with the cul-de-sac as drawn on the line drawing, there would be no variances or special exceptions considered by the Board. Mr. Johnsen confirmed that statement.

Mr. Van De Wiele stated, in that case, the proposed cul-de-sac would need to be a public street, and Mr. Johnsen confirmed that but it would cost a lot of money. Ms. Stead stated that the hardship cannot be that it will cost the applicant some money. Mr. Johnsen confirmed that he understood that.

Mr. Johnsen stated that by the definition of a variance there is a hardship due to the "...exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situations...". It is clear, and it has clearly been the practice, if the applicant has unusual circumstances, and the depth of the subject property is very unusual when the RS-1 normal depth would be 135'-0". Mr. Henke stated the depth is consistent

throughout the neighborhood. Mr. Johnsen stated that it was not because of the lots to the north, where there was a street brought in, they do not have the depth. If lot size is considered there are numerous lots throughout the neighborhood that are substantially smaller than what is proposed.

Interested Parties:

Jerry Dixon, 2929 East 45th Place, Tulsa, OK; stated his back yard joins the subject property's back yard and he opposes a three-lot split because it creates a non-homogeneous area in the neighborhood, and is inconsistent with the surrounding properties frontage. Mr. Dixon stated that in the block of the subject property there are 40 lots and 20 of the lots have 125'-0" of frontage, seven lots have 145'-0" to 165'-0" of frontage, ten lots have 100'-0" to 125'-0", with the three lots remaining that are the subject property. On 44th Place, across the street from the subject property, there 30 lots total and all of those lots are above the 100'-0" frontage. Mr. Dixon did not think the hardship had any substance or validity, and monetary issues should never be considered.

Ms. Stead reiterated that monetary gain is never a consideration of the Board.

Kenneth Guerten, 2929 East 44th Place, Tulsa, OK; stated his property is directly across the street from the subject property, and he opposes a three-lot split but would agree with the subject property being split into two lots.

J. B. Jarboe, 2915 East 45th Place, Tulsa, OK; stated he lives next door to Mr. Dixon and is also directly behind the subject property. He stated he and his wife moved into the neighborhood to get away from the zero lot line homes and the small lots, and deep narrow lots are outside the character of the neighborhood. Other than monetary gain he does not think the applicant has any other motivation to divide the property. Mr. Jarboe opposes the subject property being split into three lots.

Rebuttal:

Mr. Johnsen stated the lots on the north side of the subject property were, at one time, 305'-0" in depth.

Mr. Henke asked Mr. Cuthbertson when those lots were developed, and Mr. Cuthbertson stated that it was not done by the Board of Adjustment or PUD, so the timeline is not discernable with the information present.

Mr. Johnsen stated that his point is that the RS-1 contemplates a smaller lot and the ordinance states shape, topography, size; therefore this is a classic situation. The client would have a narrow width and much lot depth. Therefore, they would be in a situation to maintain a house with a large backyard. There is a market for that layout.

Mr. Van De Wiele asked Mr. Johnsen if the depth is the hardship, why would the applicant want to exacerbate the narrowness as opposed to the depth by dividing the

subject property into three narrow lots. Mr. Johnsen stated a very large lot can still be achieved and there is a market for that.

Mr. Van De Wiele stated that Mr. Johnsen keeps referring to market and wanted to know if it was his client's desire to sell three lots quicker than they can sell one or two lots. Mr. Johnsen stated that Mrs. Holtzapple thinks three lots would be the most productive part of how they could be developed and stay consistent with the neighborhood. Mr. Johnsen stated that lot size and density is being ignored because the infill study and the most recently adopted plan all suggest there is going to be higher density in the areas that are underdeveloped, and this is one very effective way to be consistent with the neighborhood. The proposal is within what RS-1 permits and the landowner's preference should be duly considered.

Comments and Questions:

Mr. Van De Wiele stated he cannot support this request because he thinks it is strictly a marketing issue and it would be easier to sell three lots as opposed to two lots or one lot.

Board Action:

On **MOTION** of **STEAD**, the Board voted 4-0-0 (Henke, Stead, Tidwell, Van De Wiele, "aye"; no "nays"; no "abstentions") to **DENY** a Variance of the minimum required lot width in the RS-1 district from 100 ft. to 80 ft. (Section 403) to permit lot-splits, this Board has found there is no legitimate variance space in this case; for the following property:

LTS 5 & 6 BLK 7, VILLA GROVE PARK, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

Mr. White re-entered the meeting at 1:54 P.M.

21256—HRAOK, Inc.

Action Requested:

Variance of the maximum amount of required front yard permitted to be covered with an all-weather surface in the RS-3 district from 34% to 45% to permit three-car wide driveways in front of three-car garages (Section 1303.D). **Location:** East of the northeast corner of East 51st Street and South 177th East Avenue

Presentation:

Dwayne Wilkerson, 3826 South Madison Avenue, Tulsa, OK; stated his client is working to develop this project as a single-family residential subdivision. There is a Planned Unit Development that has been through the Planning Commission and 7-0 approval has been given for the PUD with this aspect of the project. The goal is to continue building what has been built to the north in the neighborhood. Three-car garages were not considered when the code was written and that has changed today. Home buyers are asking for three-car garages instead of storage sheds. If this request is approved the approval will make the neighborhood much more user-friendly.

Ms. Stead asked Mr. Boulden if the Board can approve this request before it goes before the Council. Mr. Boulden stated the Board can act at any time but it will not be effective without the PUD being approved.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 3-2-0 (Stead, Tidwell, White "aye"; Henke, Van De Wiele "nay"; no "abstentions") to **APPROVE** a **Variance** of the maximum amount of required front yard permitted to be covered with an all-weather surface in the RS-3 district from 34% to 45% to permit three-car wide driveways in front of three-car garages (Section 1303.D) and the Board gives this approval subject to the Council approving the PUD which has been recommended. In granting this Variance there 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; for the following property:

A tract of land situated in the Southwest Quarter (SW/4) of Section 25, Township 19 North, Range 14 East, of the Indian Base and Meridian, City of Tulsa, Tulsa County, State of Oklahoma, according to the U.S. government survey thereof, said tract being more particularly described as follows: Beginning at the Southeast Corner of the Southwest Quarter (SW/4) of said Section 25; Thence N 89° 56' 51" W, along the South Line of the Southwest Quarter (SW/4) of said Section 25, a distance of 1411.00 feet; Thence N 00° 02' 49" E a distance of 1210.82 feet, to a point on the South line Block 7 of "Stonegate" a subdivision to the City of Tulsa recorded as Plat No. 5992; Thence S 89° 56' 33" E, along the South line of said "Stonegate" and along the South line of "Stonegate II" a subdivision in the City of Tulsa recorded as Plat No. 6269, a distance of 1230.79

feet; Thence S 00° 03' 27" W, along the Platted Right of Way of South 185th East Avenue per "Stonegate II", a distance of 71.07 feet; Thence S 89° 56' 33" E, along the Platted Right of Way of South 185th East Avenue per "Stonegate II", a distance of 60.00 feet; Thence along a curve to the right, along the Platted Right of Way of South 185th East Avenue per "Stonegate II", having a tangent bearing of N 00° 03' 27" E, a radius of 25.00 feet, a central angle of 90° 00' 00", an arc distance of 39.27 feet, a chord bearing of N45° 03' 27" E and a chord distance of 35.36 feet; Thence S 89° 56' 33" E a distance of 95.17 feet, to a point on the East line of the Southwest Quarter (SW/4) of said Section 25; Thence S 00° 02' 39" W, along the East line of the Southwest Quarter (SW/4), a distance of 1164.63 feet, to the Southeast Corner of the Southwest Quarter (SW/4) and the Point of Beginning. The non-astronomic bearings for said tract are based on an assumed bearing of N 89° 56' 51" W, along the South Line of the Southwest Quarter (SW/4) of Section 25, Township 19 North, Range 14 East, of the Indian Base and Meridian, City of Tulsa, Tulsa County, State of Oklahoma, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21257—Carl Edmunson

Action Requested:

Appeal the determination of an Administrative Official (#651183) regarding Automotive Repair use of the property; inoperable, unserviceable, and/or junk vehicles; and parking of vehicles on a non-all-weather material in the yard.

Location: 17317 East 14th Street South

Mr. Boulden told the Board that according to the staff report the applicant had not submitted any supporting documentation on the application explaining what the basis of the appeal was. In the Board's agenda packet there are case reports, judgements and the previous proceedings with the subject property. Mr. Boulden then asked Mr. Edmunson to explain the basis of his appeal.

Presentation:

Carl Edmunson, 17317 East 14th Street, Tulsa, OK; stated he had been granted a variance on the property because it existed as a use by right, meaning the property was grandfathered. Mr. Edmunson was then called away to serve military duty.

Mr. Boulden stated the basis of the appeal is what has already been adjudicated by the courts, and those cases are in the Board's agenda packet. Mr. Boulden advised the Board not to hear this case.

Ms. Stead stated that in the agenda packet on page 4.77 there is a Hearing Report that clearly states to Mr. Edmunson that "if the nuisance is not abated by May 31, 2011 it is requested that the remedial penalties be enforced". Therefore the Board's hands are tied until after that date.

Mr. Boulden stated the Board does not have jurisdiction because the case has been adjudicated previously and it is inappropriate for this Board to adjudicate the case again. This case is to be stricken from the agenda.

Interested Parties:

The interested parties did not come forward.

Comments and Questions:

None.

Board Action:

No Board Action was taken because the case was stricken from the agenda; for the following property:

LT 8 BLK 7, LYNN LANE ESTATES, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

* * * * *

NEW APPLICATIONS

* * * * *

20293-A—Mark A. Mobbs

Action Requested:

Amendment to a condition of a previous approval to eliminate or extend the time limitation for a Special Exception permitting a Bed and Breakfast in the RS district. **Location:** 1521 East 21st Street South

Presentation:

Leah White, Gable & Gotwals, 100 West 5th Street, Suite #1100, Tulsa, OK; stated she represents Mark and Janet Mobbs who are the owners of the Inn at Woodward Park on 21st Street. Mr. Schuller, a colleague, was before the Board five years ago and requested a special exception, and the same special exception is being requested today with the elimination of the five-year limitation. Ms. White brought five letters of support and stated the Inn has community support.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **STEAD**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Amendment to a condition of a previous approval to eliminate or extend the time limitation for a Special Exception permitting a Bed and Breakfast in the RS district. The Board specifically eliminates the period of years and grants this special exception. The Board's conditions on the previous approval was limited to three guest rooms and other provisions in 1202.C.8 apply. A sign will be limited to two square feet of display surface and no illumination; no special events such as weddings, receptions as defined in 1202.C.8; no oversized vehicles such as RV's or trailers are permitted; subject to the parking plan which was submitted at the time of the original approval; Section 1202.C.8 also states the owner/operator shall maintain a register of the bed and breakfast guests and special events for each calendar year and such register shall be available to City Code Enforcement upon request. The maximum length of stay for any guest shall be limited to 30 days per calendar year. Under the number of guest rooms permitted the Board is never allowed to permit more than twelve, however in this instance, the guest rooms are limited to three; a public restaurant is not permitted; meals may only be served to overnight guests. The Board feels this motion is compatible with the original approval; for the following property:

W. 64 E. 191.13 OF LT 4 BLK 28, PARK PLACE, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

Case No. 21267—Harley Hollan Companies

Action Requested:

Special Exception to permit Indoor Recycling (Use Unit 26) in an IL district (Section 901); a Variance to permit portions of the recycling center use outdoors within 300 ft. of an R district (Section 1226.C.1); and a Special Exception to eliminate the screening requirement for the Industrial use from an abutting R district to the east (Section 212.C.4). **Location:** 5677 South 107th East Avenue

Presentation:

Richard A. Ford, Ford Law Firm, 1800 South Baltimore Avenue, Suite 910, Tulsa, OK; stated he represents Harley Hollan Companies. This company is in an area of transition which originally was intended to be a residential area that now has become an industrial and commercial tract. The Harley Hollan Companies is a DEQ permitted company and originated in 1998 and started the recycling business side in 2002. Originally the sorting and recycling was performed in the open outside. Today there are two new buildings one of which is being used as an indoor sorting and recycling facility, which sorts and recycles construction demolition materials, i.e., plastic, paper, cardboard, glass and several others. The materials are also screened for toxic substances/waste to make sure those materials are disposed of properly. One of the great advantages to performing the sorting and recycling process indoors is that the building serves as a

wind, rain and esthetic barrier. It also allows the recycling materials, i.e., the cardboard, to stay dry; it is a safety and hygiene issue with the employees, they are able to stay in the shade and not be exposed to the elements. With regards to the neighbors there are only five residences and of those five residences three are occupied and two are vacant and are for sale. The only residence within 300 feet is to the north is in support of the company and what Mr. Hollan is doing in the community.

Ms. Stead asked Mr. Ford what percentage of the lot contained the wood chipping process. Mr. Ford stated that it was no more than 10% but more likely it was 5%. The wood chips are hauled off regularly and there are several factors in place for dust control from the wood chipping process, and a permit pending, Permit No. 256-599 with Copper Perry Plumbing, to add an additional water meter for additional misters for even more dust control.

Mr. Van De Wiele asked what the DEQ permit was for and Mr. Ford stated it is the first time in the State of Oklahoma that the DEQ has required a permit for any type of recycling/resorting facility, and DEQ classified this business as a transfer station. A transfer station is a true garbage and trash container where everything is transferred from one container to another to merely transport onto the landfill and that is not the nature of this business but that was the best classification DEQ could find.

Mr. White asked Mr. Ford if there were any citable operating standards that could be included in the Board's motion. Mr. Ford deferred to Mr. Jeff Shepherd.

Jeff Shepherd, Shepherd Engineering, 4000 North Classen Boulevard, Suite 110-S, Oklahoma City, OK; stated there are several location restrictions set forth by the DEQ rules that can prevent a facility from being built at certain locations. There are eight location restrictions set forth by the DEQ rules.

Ms. Stead asked Mr. Shepherd if the Board were to state in their motion that it is subject to local, state and federal regulations set forth in DEQ rules would that cover all state, local and federal rules. Mr. Shepherd confirmed that it would.

Mr. Henke left the meeting at 2:30 P.M.

Interested Parties:

Brenda Jones, 1820 Southview, Bartlesville, OK; stated she represents the surrounding community that is not within the 300 feet radius for notification.

Ms. Stead asked Ms. Jones what area she is referring to, and Ms. Jones stated it was the Harley Hollan grinding facility, or the wood chipping facility.

Mr. Henke re-entered the meeting at 2:33 P.M.

Ms. Jones stated the wood chipping facility is right next to the detention pond. That area is used quite frequently for walking and Little League teams also use that area. Ms. Jones stated she and the group she represents wants to make sure the air quality is not going to be jeopardized.

Mr. Van De Wiele asked which properties she was representing. Ms. Jones stated it was the Golden Valley Housing Addition and some of the residents in the apartment complexes in the area. The Golden Valley Housing Addition is east of subject property. Ms. Jones, again, stated she and the residents she represents are concerned about air quality of the park.

Mr. Boulden stated that he has had litigation on this particular detention facility and it is not a City of Tulsa park but it is City-maintained and it does have a dual use. The detention facility does have a track around it but it is not a City park.

Ms. Jones agreed that facility was not a City park but it is being utilized by the community. There are soccer goals and the children practice in the area, so they want to make sure the air quality is going to be okay for the children and adults to breathe when the walking trail is being used, which the trail goes right beside the wood chipping unit.

Ms. Stead stated that the DEQ has approved this facility therefore her quarrel is with them not the Board of Adjustment. Ms. Stead stated she understood Ms. Jones's concerns, and that if an air quality problem arises, she or the concerned residents should notify the DEQ or the EPA.

Mr. Tidwell asked Mr. Ford what the timeline was for the additional water mister for the wood chipping machine for the dust control. Mr. Ford stated the dust control is already in place and a cover has been added to the dump conveyor with a head to the top of the commercial industrial chipper. It is not the huge chipper that a person sees by the river when the City was chipping the damaged trees. The timing to add additional full-time misters to the actual chipper is months to weeks. The final material is loaded into the trucks by skid loaders or by little Bobcats, covered, and hauled away. The material is constantly being dampened or wet for the dust control. Also, the entire facility is concrete to help control the dust. Across the street and down slightly are Tulsa Sod and Mulch and they have bins of mulch that are visible to the public. That company is located on a dirt lot with a little bit of gravel and that produces more dust in loading the trucks than the chipping produces.

Comments and Questions:

Ms. Stead confirmed with Ms. Jones that the Board had not ignored her air quality concerns, and that if she made a complaint with the DEQ or the EPA the subject company would be under review within five days.

Board Action:

On **MOTION** of **STEAD**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Special Exception to permit Indoor Recycling (Use Unit 26) in an IL district (Section 901); a Variance to permit portions of the recycling center use outdoors within 300 ft. of an R district (Section 1226.C.1); and a Special Exception to eliminate the screening requirement for the Industrial use from an abutting R district to the east (Section 212.C.4). As to the Variance for the distances from the R district, the Board has found that prevalent use of the R district is actually industrial, taking into consideration a letter dated April 14, 2011 from the owner which gives more specifics on the type of operation the Board is approving. It is noted that any asbestos or toxic waste of any kind which becomes obvious during the sorting/recycling is immediately and properly disposed of. In regards to the Special Exceptions for the wood chipping operation, this outside wood chipping operation will never occupy more than 10% of the total lot area and every precaution will be taken to keep it moist or wet to the point where blowing dust is not visible. This is subject to all local, state, and federal regulations particularly those by the DEQ or the EPA. The Board finds in the two Special Exceptions they are 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. In granting the Variance the Board has found, as stated, the R district near the property are actually prevalently used as industrial. The Board states, again, the wood chipping outdoor facility is a very small part of the operation and the Board feels this Variance covers the peculiar circumstances of the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

S11.5 LT 6 & LT 7 LESS BEG SECR LT 7 TH W285.60 NW208.12 W216.72 TO PT 1.05S NWC LT 7 N12.53 E634.81 S173 POB BLK 1, LT 8 LESS BEG NEC TH S161.50 W266.93 N140.37 NW27.41 NL E285.60 POB BLK 1, LT 9 LESS S80 W180 & LESS BEG NEC TH S160.24 W317.23 N67.80 NE53.08 N77.62 NL E266.93 POB BLK 1, GOLDEN VALLEY, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

*****.

Case No. 21269—Jeremy Perkins

Action Requested:

Variance of the front yard requirement in the RS-3 district from 25 ft. to 0 ft. (Section 403); and a Variance of the minimum required livability space in the RS-3 district of 4,000 sq. ft. (Section 403); to permit a two-car garage addition to an existing dwelling. **Location:** 302 East 29th Street

Presentation:

Jeremy Perkins, 2200 South Utica Place, Suite 216, Tulsa, OK; stated he is the architect and represents the homeowners. The owners would like to build a two-car garage using the existing one-car garage for storage. There is not enough depth on the lot to be able have nine foot wide garage doors and there is a utility easement to the south that cannot be built into so there is no other place to erect the garage other than as shown on the presented drawing. The garage will be sunken so the existing parapet look can be maintained. The siding on the garage will match the existing house.

Interested Parties:

Sally Davies, 2700 South Boston Avenue, Tulsa, OK; stated she is on the Maple Ridge Home Owners board and she is concerned with maintaining the historic value and look of the neighborhood. Ms. Davies said that in general she would be opposed to the approval of the variance because the garage is right on the building line; setbacks are in place for a reason.

Mr. Henke left the meeting at 2:56 P.M.

Joyce Saunders, 1852 East 31st Place, Tulsa, OK; stated she is actually attending this meeting for a different matter today but wanted to let the Board know that the exceptions they make in the nice older neighborhoods to allow encroachments closer to the street are destroying the fine quality that is in the older neighborhoods.

Mr. Henke re-entered the meeting at 2:58 P.M.

Comments and Questions:

Mr. Cuthbertson told the Board that he had failed to mention in the beginning that the second variance requested, the variance on the livability space, is not actually required. It was applied for by the applicant but in reading Section 1404 of the code, because the

lot is legally non-conforming, as long as 50% of the lot area is provided for livability space the applicant is okay.

Board Action:

On **MOTION** of **STEAD**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Variance of the front yard requirement in the RS-3 district from 25 ft. to 0 ft. (Section 403). Originally a Variance was applied for on the livability space; however, it is found as unnecessary as this lot is legally non-conforming containing over 6,200 square feet, the RS-3 requirement is 6,900 square feet. The lot is also pie-shaped and the house was built in 1920. There are similar constructions up to the property lines which have been repeated in this neighborhood. The orientation of the house would also makes any additions or changes nearly impossible. The Board has found that these reasons are extraordinary or exceptional conditions or circumstances peculiar to this 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; subject to conceptual plan 8.7. The height shall be limited to 14'-0" in height as shown on conceptual plan 8.8; for the following property:

LT 12 BLK 23, SUNSET TERRACE, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

Case No. 21270—Bill LaFortune

Action Requested:

Variance of the maximum ground sign height permitted for a sign abutting a designated freeway in the CH district (Section 1221.E.1) from 50 ft. to 60 ft.; a Variance of the setback of a sign over 25 ft. in height from an abutting street (Section 1221.E.1); a Variance of the required separation of a digital sign from a driving surface of a street (Section 1221.C.2.b) from 20 ft. to 12 ft. **Location:** 4616 East Admiral Place

Presentation:

Bill LaFortune, 2100 South Utica Avenue, Suite #210, Tulsa, OK; stated he represents First Admiral Properties, LLC which is the company developing the subject property. There is one building on the property that has been vacant for at least a year and it has not been updated, improved or renovated since its original construction several decades ago. The building is currently being renovated, upgraded or improved for a five-star gun range with a complete sales and service operation and training in the building. The application was originally for three variance requests, the third variance request being for a required separation of a digital sign. The applicant has worked to comply with that

setback; the site plan now reflects compliance and the applicant withdraws that request today. As for the two remaining variance requests there are very clear, unique and exceptional circumstances which would justify the finding of a hardship if the code's provisions were to be literally enforced. In Exhibit A there are several elevations depicted. One of the shots reflects several elevations, which provides a picture of the unique changes of grade, from where the proposed sign grade will be as compared to the elevations of the hills on the east and west of the subject property which rise significantly from the subject property's grade. The sign on the west side of the subject property is 20 feet higher at grade level making that sign approximately 62 feet high above the subject property's grade. The sign on the east side of the subject property the base elevation rises 28 feet and that sign is 72 feet high by itself making that sign approximately 100 feet high above the subject property's grade. With these facts in consideration the applicant is requesting a variance for only 10 feet higher than the code allows which makes the proposed sign less than the surrounding signs. The roadway immediately adjacent to the subject property, which is East Admiral Boulevard, is designated a freeway per the major street and highway plan. The property is abutted by a freeway service road, a freeway ramp, and by a multi-lane interstate which are exceptional circumstances to justify the variance.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **STEAD**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Variance of the maximum ground sign height permitted for a sign abutting a designated freeway in the CH district (Section 1221.E.1) from 50 ft. to 60 ft.; a Variance of the setback of a sign over 25 ft. in height from an abutting street (Section 1221.E.1). The original application requested a variance of the required separation of a digital sign from a driving surface of a street (Section 1221.C.2.b) from 20 feet to 12 feet, however, per the site plan presented the third variance is no longer needed. The Board finds that the designation of a freeway on the south side of the building involved is correct; subject to conceptual plans 9.10 and 9.11. In granting these variances 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; for the following property:

**E136.6 LT 7 LESS N29.25 THEREOF BLK 1, STANFORD HGTS RESUB L16-20 B2
RODGERS HGTS SUB, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

Case No. 21271—Andrew Shank

Action Requested:

Variance of the spacing requirement for a digital outdoor advertising sign of 1,200 ft. from another digital outdoor advertising sign facing the same travelled way (Section 1221.G.10). **Location:** 6618 South 107th East Avenue

Ms. Stead asked Mr. Boulden, before the hearing proceeded, if the case the Board had heard and ruled on previously for this same location was in District Court because she did not feel comfortable voting on a case that is being adjudicated by the court. Mr. Boulden stated that that decision was an interpretation of the code based on an appeal from an administrative official. This is not the exact same case, although it may influence any decision on this case. It is the same location but a different kind of relief that is requested.

Presentation:

Andrew Shank, 2727 East 21st Street, Suite #200, Tulsa, OK; stated he represents Stokely Outdoor Advertising Company and is requesting a variance from the literal application of the terms of the Zoning Code. This new request is independent of Board of Adjustment Case No. 21226, which Ms. Stead had mentioned. The determination in that case has been appealed to District Court and stays all proceedings in furtherance of that determination. Mr. Shank continued the applicant did not seek a variance in that relief and here is not asking for the Board to make a determination with regard to whether an electronic message center turns an outdoor advertising sign into a digital outdoor advertising sign. The stay has the practical effect of eliminating the Board's determination. During appeal the status quo must be maintained. The status quo is the applicant was denied a permit for a digital outdoor advertising sign because of spacing verifications with the City Zoning Code. It is of that bane the applicant is seeking a variance from the application of terms with regard to outdoor advertising signs.

Mr. Van De Wiele asked Mr. Shank where the digital sign is located that the applicant is within 1,200 feet of, and Mr. Shank stated it was the Lamar sign. Mr. Van De Wiele then asked Mr. Shank if previously he had come before the Board asking the Board to define that it was not a digital sign, and Mr. Shank confirmed that was correct. Mr. Shank said he is not asking for a determination to the contrary, he is asking for relief from terms of the code. The status quo that must be maintained because of the appeal is that there is a digital sign at the Lamar site and the Stokely sign is blocked due to spacing regulations. Mr. Shank is not asking the Board to make that determination he submits to the Board that is the law because of the appeal. Mr. Van De Wiele agreed.

Mr. Shank stated by statute in the City Zoning Code the Board of Adjustment has the power to grant variance from the terms of the Zoning Code where such variance will not cause substantial detriment to the public good or impair the spirit, purposes, or intent of the Zoning Code or Comprehensive Plan whereby reason of exceptional circumstances

peculiar to the property the literal enforcement of the code results in unnecessary hardship. The Oklahoma Supreme Court has described the Board of Adjustment power as basically and primarily a matter of doing substantial justice between the applicant and the public interest as declared in the zoning ordinance. The Tulsa Zoning Code provisions concerning outdoor advertising signs are ambiguous. The ambiguity is the source of the applicant's unnecessary hardship. Ambiguity is an uncertainty of meaning or intention in a provision. In this case the code is clearly ambiguous. The City administrative official made a determination based on the code's outdoor advertising sign provisions. This Board made the opposite determination based on the same provisions, which have been appealed to District Court. Uncertainty of meaning or intention as to the Zoning Code provisions concerning outdoor advertising signs is the heart of the District Court appeal. The applicant diligently pursued his property rights associated with the digital outdoor advertising sign on the subject property. The first step was a spacing verification in January 2010 with this Board of Adjustment. The second step was a Planning Commission hearing for a major amendment to PUD-601 and a corridor plan for Z6631SPZ in March 2010, which was denied. A City Council appeal regarding that denial was held and overturned in April 2010. The Board of Adjustment saw a revised spacing verification in September 2010 based on negotiations with the Oklahoma Department of Transportation. The Board granted that spacing verification. Next was a detailed sign plan submitted to the Planning Commission; ODOT then issued a state permit to the applicant in November 2010. A detailed site plan was then submitted to the Planning Commission and approved in December 2010. A city permit was applied for and denied in January 2011, it was then appealed to this Board in March which overturned that determination which is now in District Court, and not the subject of this hearing. But for the ambiguity of the code, the applicant's diligence would have resulted and been rewarded with an outdoor digital advertising sign. Because of these exceptional circumstances, any result other than allowing a digital outdoor advertising sign at this location is an unnecessary hardship on the applicant. The facts of this case are unique and not generally applicable to other property in the same district. This case is so unique it is a matter of first impression before the Board. In other words, this is the first time the Board has been asked to address facts of this nature. It should be noted that the District Court appeal from Board of Adjustment Case No. 21226 will ultimately decide the ambiguity of the code. Thus it will further insure that future cases will not reach similar standing with this Board.

Mr. Van De Wiele asked Mr. Shank, if he were to be granted this variance, the lawsuit was going to be pursued. Mr. Shank stated that his client is not the party proceeding in the lawsuit, they are defending the action of the Board. Mr. Van De Wiele then asked Mr. Boulden if the lawsuit would go away. Mr. Boulden stated that if Mr. Shank were granted the variance in today's hearing, he was not sure if there would be an appeal from today's decision.

Ms. Stead asked why this request was called a Variance when the Board ruled in effect that the message board was not a digital sign. Therefore, a variance is not needed but the applicant needs to verify the spacing and is that done by what is before the Board. Mr. Shank stated that the variance is technically legal because of the appeal a stay

springs forward as soon as Lamar perfected their appeal. The stay means no further action can come out of that decision, which has a practical legal effect of eliminating the Board's decision, although temporarily. It will be resolved at the conclusion of that case. But here and now today, with this case before the Board, it is as if the Board never ruled on it.

Mr. Van De Wiele asked Mr. Shank if the variance were granted, the applicant would install the digital sign ten days from today. Mr. Shank stated the applicant would pursue according to the Board's variance. Nothing could be done under the same permits because that would be stayed, but under a variance a new permit, a new site plan would be lawful.

Ms. Stead stated this Board had voted 3 to 2, showing a conflict among the Board members, and she wants a District Court decision. Ms. Stead stated that she has complained to two different mayors in the past that the Board needed more definition. She personally sought a moratorium on signs and it took five months to receive the moratorium. Ms. Stead stated there are conflicts in the code and it does need to be clarified and cleaned up; it is now being worked on. That leaves this Board on an island all by themselves. This Board said the message center did not constitute a digital sign. By saying that, Ms. Stead stated her vote is still with that decision, and a variance is not needed but a verification of spacing.

Mr. Shank told Ms. Stead he understood her position and reiterated the District Court case is proceeding and his client is not the driver of the District Court case but respondents. It is proceeding and Mr. Shank understands that Lamar wants a determination just as badly as this Board so it will proceed. There is a scheduled conference before Judge Nightingale on the 31st. Mr. Shank stated he is not asking about determination and he knows that there are facts in law that are intertwined and it is hard to separate them, but legally this relief is completely independent from the previous relief. This relief is a Variance. This relief is asking the Board to do substantial justice for the applicant based on the ambiguity of the code.

Mr. Van De Wiele asked Mr. Shank if the hardship was just the ambiguity itself, and Mr. Shank confirmed that it was.

Mr. Boulden stated that he had to disagree with Mr. Shank on one thing. He, Mr. Shank, states that the Board's previous decision is ineffective but Mr. Boulden does not believe that is the case. The stay stops any further proceedings in that case and when it is tried in District Court it is tried as though the Board of Adjustment never made a decision. The Board has declared how the code should be interpreted until the District Court provides a different decision. To that extent, Mr. Boulden felt the Board could rely on the previous decision and be consistent with that.

Mr. Van De Wiele asked Mr. Boulden if he could speak to the effect of the stay; if this Board were to grant today's variance request the sign would go up pursuant to the variance but it has to be stayed pursuant to the other case. Mr. Boulden stated the

interpretation is stayed that the City cannot proceed on that interpretation until the District Court makes a decision. Mr. Van De Wiele then asked Mr. Boulden if the City could issue a sign permit on this case but not on the other case. Mr. Boulden confirmed that Mr. Van De Wiele's statement was true.

Mr. Shank stated, again, that the ambiguity of the code is the hardship. This is a unique case, a matter of first impression before the Board so its applicability to property in the district isn't general. A variance in this case will not cause substantial detriment to the public good or impair the purpose, spirit or intent of the code or comprehensive plan.

Mr. Boulden stated that the spirit or intent of the code is to have a spacing requirement between digital signs, and he asked Mr. Shank how that would not be in violation of the spirit and intent of the code to grant this variance. Mr. Shank stated that every variance violates the spirit of the code because someone is asking the Board to make a decision that differentiates from the rules. That is exactly why the Supreme Court looks at the action from the Board as a reasonable body doing substantial justice to the applicant in light of the public interest. The Board's acknowledgement in its express ruling In Case No. 21226 tipped its hand to a sign in this location to not be injurious to the public. In fact, even dissenting discussion from the Chairman and Mr. Van De Wiele acknowledged a variance was appropriate and not injurious to the public good, and it is in that bane that this case is being heard today. A vote today by the Board of Adjustment granting this requested variance amounts to substantial justice between the applicant and the public good. Mr. Selzer, from Lamar, and his counsel Mr. LaFortune are present at this hearing today and they do not oppose the relief that is being sought.

Interested Parties:

There were no interested parties present.

Comments and Questions:

Mr. White asked Mr. Boulden to express his suggestions in this matter as the Board's legal representative. Mr. Boulden stated that the Board should be consistent with its previous decision. Mr. Henke stated if the case is overturned then the circumstances have changed and the Board would have to address the matter at that point. Mr. Boulden suggested that if this case is denied then it will probably be appealed, and perhaps on the court level there would be a consolidation and both would be addressed at the same time.

Mr. White asked Mr. Boulden if Lamar were to ask for a variance would the same thing be added to that case, and Mr. Boulden stated he did not think so.

Mr. Henke left the meeting at 3:45 P.M.

Mr. Henke re-entered the meeting at 3:48 P.M.

Board Action:

On **MOTION** of **STEAD**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **DENY** the Variance of the spacing requirement for a digital outdoor advertising sign of 1,200 ft. from another digital outdoor advertising sign facing the same travelled way (Section 1221.G.10); no finding was established for the record; for the following property:

LT 2 BLK 1, TULSA COMMONS, THE PRT RSB PRT L1 B1 THE BEDFORD, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

* * * * *

Case No. 21273—Blake Ewing

Action Requested:

Variance of the display surface area for a roof sign in the CBD (Section 1221.E.3) from 48 sq. ft. **Location:** 116 South Elgin Avenue

Presentation:

Blake Ewing, 523 South Marion Avenue, Tulsa, OK; stated he represents Back Alley Blues & BBQ. The entrance to the establishment is unique because the entrance is in the alley and the arrow on the proposed sign points and directs customers to the entrance in the alley. The frontage of the establishment has been calculated by the City to be 22 feet, but the front is actually in the rear. Another unique thing about this establishment is there will be a rooftop seating area for patrons. The parapet wall has been raised approximately four feet to accommodate the rooftop seating area. Originally the sign was to be placed on the wall facing Second Street but now the sign is proposed to be placed on the north wall so when patrons are on the rooftop, the sign will be visible to the customers. The lot in front of the subject property is not part of the restaurant, and the applicant is fully aware of the possibility of a business being built and blocking the proposed Back Alley sign. The applicant is asking the Board to consider a different part of the existing building as their frontage because the applicant wants to have the restaurant face Second Street. Currently the proposed front door faces an alley and the applicant is going to clean up and light up the alley, and lay down new brick to make it a safe walkway that splits the block. The restaurant and the rooftop seating will be accessed from an enclosed courtyard.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Variance of the display surface area for a roof sign in the CBD (Section 1221.E.3) from 48 sq. ft. to not more than 100 square feet as shown on the diagram submitted today which is dated as an original drawing March 31, 2010. For purposes of clarification the location and height of the sign is shown on that drawing are not included in the restriction to that drawing. This is made subject to the location on the conceptual site plan as shown on page 11.7. The Board has found that this narrow lot has approximately 22 feet facing Elgin is unique in the district and that the side of the building will be the permanent display area for the business in question, and it is found that this is an unusual and extraordinary circumstance which is peculiar to this land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

S23.11 LT 2 BLK 86,TULSA-ORIGINAL TOWN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

Case No. 21276—Duvall Architects

Action Requested:

Minor Special Exception to reduce the required front yard in the RS-2 district (Section 403) from 30 ft. to 25 ft. **Location:** 3211 South Victor Avenue

Presentation:

John Duvall, 1850 South Boulder, Suite #200, Tulsa, OK; stated he is the project architect. Construction on the subject property has already begun. The project was submitted for permit and a permit was issued on November 19, 2010. On April 21st Mr. Jack Page of Development Services Department gave notice that there was a problem with the permit. There was a meeting with Mr. Page and he was informed that the City of Tulsa interpretation was that the project had to meet the setback requirement from the centerline of the street as outlined in Table 403 as well as the tabular amount relation to the property line. That was not Duvall Architects' interpretation and not how the project proceeded in the original design. After two meetings with Mr. Page, the resulting decision from Development Services was that Duvall Architects met the intent of the code but to receive clarification on the issue they asked that a Minor Special Exception be applied for. It was always the intent to have the project be in compliance with all the residential and zoning codes; however, based on the request from Development Services the applicant is asking for approval of a Minor Special Exception.

Mr. Van De Wiele asked Mr. Duvall if the plans submitted before the November permit was issued were the approved plans built to date. Mr. Duvall confirmed that the project has been built according to the approved plans. Mr. Van De Wiele asked if those plans had been reviewed by City permitting and Mr. Duvall confirmed that they were. Mr. Van De Wiele then asked if Mr. Duvall had then been issued a permit and Mr. Duvall confirmed that question. Mr. Van De Wiele then asked Mr. Duvall if it was only after the project had reached the stage that it is at now someone raised an issue and Mr. Duvall confirmed that statement.

Interested Parties:

Kevin Murray, 1824 East 31st Place, Tulsa, OK; stated he is the representative for the Board of Trustees Home Owners Association and they are opposed to the requested minor special exception. The Board of Trustees feels the house is going to be a beautiful and valuable home but it is too large for the lot in every dimension, height, width, and depth. Setback standards exist to protect neighborhoods and that variances or minor exceptions should be requested prior to construction because once the setback standards are broken the Board of Trustees feel it will happen again and again. There is also a concern over density of development.

Ms. Stead asked Mr. Murray if he was aware that the request was for a minor special exception and as such is recognized in the city code that there is no hardship required.

Mr. Henke asked Mr. Murray if he thought the five feet would be detrimental to the neighborhood, and if he was saying it would be because it sets a precedent. Mr. Henke then stated that if Mr. Duvall had had some indication from the City that he was not in compliance with the zoning code he would have made adjustments to his architectural plans and wanted to know if Mr. Murray disagreed with that statement. Mr. Murray stated there were several homeowners in the neighborhood who want the City rules to be enforced. Mr. Henke asked Mr. Murray if he thought the architects or homeowners were actively trying to take advantage of the situation, to the extent of five feet, or was there an error that was made by the City in the permit office; had it been discovered at an earlier point so Mr. Duvall could have changed his plans. Mr. Murray stated Mr. Duvall has a very good reputation and that he finds it baffling to think that professionals would knowingly enter into a project and subject an owner to this type of financial risk. Mr. Murray stated this is a very frustrating situation but the Board of Trustees think the house is just too large for the lot; the overall scale is offensive.

Mr. Van De Wiele asked Mr. Murray if his homeowners association has the authority to review building plans, and Mr. Murray stated they did not. Mr. Van De Wiele then asked Mr. Murray if he and the homeowners association were asking this Board to require the homeowners rip off the front three, four, or five feet of the house. Mr. Murray stated that the rules are the rules.

Steven E. Smith, 2141 East 32nd Place, Tulsa, OK; stated he is a former President of a homeowners association and takes an interest in what is happening. There are many people in the neighborhood who think the house is a monstrosity but he takes issue with

the integrity of the architect in this case. The architect and builder are not new to the field. The code is real simple there is a 30-foot setback. So for an architect to submit a plan to an owner and to a construction firm with a 25-foot setback is inexcusable. Mr. Smith stated he thinks the Building Inspection department was duped in this matter because the drawing that the architect designed says 25'-6" for the setback to the building line itself. Any architect knows better than that.

Mr. Henke asked Mr. Smith how he thinks the Permit Office was duped, and Mr. Smith stated the Permit Office looked at the seal and said okay. Mr. Tidwell stated if that were the case then the Permit Office was at fault. Mr. Smith stated it was the architect's fault for deceiving the Permit Office. The architect should not have submitted a violation of the setback requirements; he met the requirements on the south, east and the front building line. When the lot is being crowded in every direction and five feet is being shaved off the front so the building can be crowded a little bit closer than the code requires; the issue is of bad faith. The Board can grant an exception but the language of the bulk and area requirements state the Board may, not mandatory, may waive and go back five more feet. There is also a height violation because there is a 35-foot restriction, and per the plans submitted the height is 34'-11" for top ridge line on the roof without taking the ground elevation into consideration. What Mr. Smith wants is for the Board to deny the minor special exception request because this is a blatant violation.

Mr. Van De Wiele asked Mr. Smith if he saw the subject home as lowering his property value, and Mr. Smith stated it lowered the adjacent property value because it is a monstrosity.

Brian Curthoy, 601 South Boulder, Suite #400, Tulsa, OK; stated he is present on behalf of Ty and Ketrin Boone, who live next door to the subject property. They oppose the granting of the minor special exception because they do not think it is in fitting with the spirit and intent of the act. The additional five feet is not consistent with the other homes in the subdivision nor is the size. It is understood that the City granted this building permit but before this body today the consideration is whether or not this special exception should be granted and whether it will be injurious to the neighborhood or detrimental to the public welfare. By allowing this size of home to be built five feet closer to the street would be injurious to the neighborhood.

Caroline Swinson, 1850 East 32nd Place, Tulsa, OK; stated she has concerns over stormwater management.

Ms. Stead told Ms. Swinson that the Board of Adjustment cannot address stormwater management issues. Mr. Cuthbertson stated that Ms. Swinson can contact David Steele of the City's Public Works Department to insure that stormwater reviews have been performed on this property.

Terrill Palmer, 1762 East 31st Street, Tulsa, OK; stated he is not opposed to the minor special exception being granted, and he lives two blocks from the subject property.

Ms. Stead had to leave the meeting at 4:49 P.M.

Gentra Sorem, Connor and Winters, 4000 One Williams Center, Tulsa, OK; stated she represents the Raglands. Ms. Sorem wanted to address Mr. Smith's comment about deceit in this case. The code is not very clear. If one were to ask Mr. Cuthbertson he would agree with our interpretation on how to measure and the house would actually be behind the five foot setback. Code Enforcement has a slightly different view point which makes the house five foot in front of the setback. So there certainly was no intent to pull a fast one. There have been a lot of exceptions of more than five foot granted for this neighborhood.

Mr. Cuthbertson stated there are two ways of looking at the measurement of the building in a residential neighborhood. One way is to take the measurement from the centerline of the street, add half the distance of the abutting street, if it is not a street designated on the major street plan then take 25 feet and add to that 25 feet the number in the column, which in a RS-2 district would be 30 feet. By that measurement from the centerline the code would require 55 feet from the centerline. This building has 65 feet. It is a wider right-of-way. There are residential buildings that have been permitted and built based on that measurement from the centerline of the street and they did not comply with the front yard requirement as it is measured between façade and the front lot line. But under today's interpretation, they are saying regardless of the width of the right-of-way you must have a front yard requirement measured between the façade and the front lot line of 30 feet. Mr. Cuthbertson stated he has seen it done both ways and it changes with the interpretation at the City Permit Office.

Rebuttal:

Mr. Duvall stated the point Mr. Cuthbertson just outlined is the reason this case is being heard. When the process was started they read the code. The paragraph above the table says you shall take half of the right-of-way unless it is not on a major street plan, 25 feet and add that to the tabular value which is 30 feet which results in the 55 feet setback. That formula is what Duvall Architects used. The house size presented a challenging problem and the firm tried to address that. If the firm's interpretation was incorrect they expected the City to tell them; the intent was never to deceive anyone.

Mr. Henke stated he understood the neighbors' concerns because the house is being built to the limits, and Mr. Duvall knows that because he designed it that way at the owner's request. Mr. Duvall confirmed that statement because the owners came to him with a program and his job was to fit that within the allowable height, setbacks, and areas allowed which was achieved.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Minor Special Exception to reduce the required front yard in the RS-2 district (Section 403) from 30 ft. to 25 ft. finding the Minor Special Exception will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; for the following property:

LT 1 BLK 5, BREN-ROSE ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

* * * * *

Case No. 21277—City of Tulsa

Action Requested:

Variance of the maximum number of signs permitted for a non-residential use in the RM district (Section 402.B.4). **Location:** 7515 South Riverside Drive

Presentation:

Richard Alexander, 7515 South Riverside Drive, Tulsa, OK; stated the existing sign that is located on the south side of the subject property is actually inventoried as a piece of art work with a value of \$12,000.00. The proposed sign is to advise the public as to where the Police Department is located.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 4-0-0 (Henke, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Variance of the maximum number of signs permitted for a non-residential use in the RM district (Section 402.B.4), per conceptual plan on pages 13.5 and 13.6. Finding that for reasons of public safety located at the Tulsa Police Headquarters on Riverside that 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; for the following property:

PRT LTS 1 THRU 3 BEG SECR LT 1 TH W72.89 NW545.06 TH ON CRV LF 166.89
N35.88 E495 S611.60 POB BLK 3, RIVER GROVE SUB, CITY OF TULSA, TULSA
COUNTY, STATE OF OKLAHOMA

Case No. 21278—120 Development Group, LLC

Action Requested:

Verification of the spacing requirement for an Adult Entertainment Establishment (Use Unit 12a tobacco shop/ bar use) of 300 ft from a public park, school, church and 50 ft. from an R district (Section 1212a..C.3.). **Location:** 118 North Boston Avenue

Presentation:

William Wilkins, 615 North Cheyenne Avenue, Tulsa, OK; stated he represents Classic Cigars which is proposing to open a tobacco shop and bar in the Brady District.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

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

**S50 LT 1 N50 LT 2 BLK 41, TULSA-ORIGINAL TOWN, CITY OF TULSA, TULSA
COUNTY, STATE OF OKLAHOMA**

Case No. 20248-C—Brad Lechtenberger

Action Requested:

Minor Special Exception to amend a previously approved site plan to permit a building floor area addition within an existing structure. **Location:** 8621 South Memorial Drive

Mr. Tidwell left the meeting at 5:01 P.M.

Presentation:

Brad Lechtenberger, Daman Lechtenberger Architects, 705 South Elgin, Suite #107, Tulsa, OK; stated he is representing the Regent Preparatory School and they are requesting to add 3,316 square feet which is an interior second floor addition to an existing building. The addition will be within the existing footprint and envelope. The area where the proposed addition will be built was formerly a two-story area when it was Higher Dimensions Church. By adding the requested area, three extra parking spaces would be required.

Mr. Tidwell re-entered the meeting at 5:04 P.M.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Minor Special Exception to amend a previously approved site plan to permit a building floor area addition within an existing structure, the previous conditions established with the Board will still apply; per conceptual plan on page 15.7; for the following property:

LT 1, BLK 1, HIGHER DIMENSIONS, 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 5:06 p.m.

Date approved: 6/14/11

Frank X. M. [Signature]
Chair