

**BOARD OF ADJUSTMENT**  
**MINUTES** of Meeting No. 1063  
Tuesday, January 24, 2012, 1:00 p.m.  
Tulsa City Council Chambers  
One Technology Center  
175 East 2<sup>nd</sup> Street

<b>MEMBERS PRESENT</b>	<b>MEMBERS ABSENT</b>	<b>STAFF PRESENT</b>	<b>OTHERS PRESENT</b>
Henke, Chair Stead Tidwell, Secretary Van De Wiele White, Vice Chair		Alberty Back Sparger	Swiney, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Thursday, January 20, 2012, at 9:00 a.m., as well as at the Office of INCOG, 2 West Second Street, Suite 800.

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

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

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**MINUTES**

On **MOTION** of **TIDWELL**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the **Minutes** of the January 10, 2012 Board of Adjustment meeting (No. 1062).

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**UNFINISHED BUSINESS**

**21357—Andrew Shank**

**Action Requested:**

Variance from the requirement that a sign in the Residential Multifamily (RM-1) District be lit by constant light for existing sign to accommodate for an electronic message center (Section 602.B.4.f); Variance to reduce setback from 20 feet to 18 feet from the driving surface on South 91<sup>st</sup> East Avenue and setback from 19 feet from driving surface on East 61<sup>st</sup> Street to allow for the overhang of an Electronic Message Center added to an existing sign (Section 1221.C.2.b). **Location:** SW/c of East 61<sup>st</sup> Street and South 91<sup>st</sup> East Avenue (CD 7)

**Presentation:**

No presentation was made. The applicant has requested a continuance to the next Board of Adjustment meeting.

**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”; none absent) to **CONTINUE** the request for a Variance from the requirement that a sign in the Residential Multifamily (RM-1) District be lit by constant light for existing sign to accommodate for an electronic message center (Section 602.B.4.f); Variance to reduce setback from 20 feet to 18 feet from the driving surface on South 91<sup>st</sup> East Avenue and setback from 19 feet from driving surface on East 61<sup>st</sup> Street to allow for the overhang of an Electronic Message Center added to an existing sign (Section 1221.C.2.b) to the meeting of February 14, 2012; for the following property:

**LT 1 BLK 1, WOODLAND VALLEY OFFICE PARK, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

**21360—Esperanza Sanchez**

**Action Requested:**

Variance to exceed from 562 square feet to 780 square feet in the RS-3 District for accessory buildings (Section 402.B.1.d). **Location:** 1049 North Sandusky Avenue East (CD 3)

**Presentation:**

The applicant was not present; the case has been postponed until the end of the meeting.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

No Board action at this time.

**20394-B—Darell Christopher**

**Action Requested:**

Variance to hold special events at an approved Bed & Breakfast Inn extending five-year time limit to permanent (Section 1202.C.8.f). **Location:** 506 West Fairview Street (CD 1,4)

**Presentation:**

**Travis Colt**, Attorney, 1700 Southwest Boulevard, Tulsa, OK; stated he represents the Christophers in this case. Five years ago the Christophers were before the Board regarding the Bed and Breakfast Inn with several conditions attached to the approval. Only one of those conditions has not been complied with, and that is customer parking lot. During the five year period approved by the Board they have become very successful but the recent economy has slowed that success. The success of the Bed and Breakfast relies heavily on special events and that is the reason for the variance request. Without approval of the variance special events cannot be held and to deny the variance would essentially cost the Christophers their business and their home because they do live on site.

Ms. Stead told Mr. Colt that the Christophers had every opportunity to come back before the Board to plea their case and to let the Board know of their difficulties. Mr. Colt stated that the Christophers are now in the position to comply with the parking lot requirement.

Mr. Van De Wiele asked Mr. Colt for a timeframe on getting the parking lot completed, and Mr. Colt stated that he thought the parking lot could be completed in six months, maybe even sooner. Mr. Van De Wiele asked Mr. Colt if a contractor had been contacted, and Mr. Colt stated that the Christophers have two bids for parking lot.

Mr. Henke asked that if the Christophers could pay for the work what is the issue? Mr. Colt stated that if the parking lot is what will allow the Christophers to keep their business, then the parking lot could be started as soon as possible.

Ms. Stead stated that she thought there were other issues and she wants to hear the people in attendance for this case speak before making the issues are addressed and a decision is rendered.

**Interested Parties:**

**John Moody**, Attorney, 6004 South Marion Avenue, Tulsa, OK; stated that he represents Mr. David Denham. Mr. Denham owns a single-family residential house located at the northwest corner of West Fairview and North Osage Drive, which is directly across the street from the subject's application. This is not an application for a variance. The Board does not have the authority to grant a use variance, permitting a use that is otherwise prohibited in an RS-2 residential district. This is an application for a special exception under Section 1202.C.a.6, and this is important. The application states this is a request for a variance to hold special events and sites Section 1202.C.8.f. Section 1202 are special exceptions which may be approved by the Board under the conditions for each special exception, which is black and white zoning code language.

Mr. Henke asked Mr. Alberty for advice on this possible conflict. Mr. Alberty stated that special exception is for the Bed and Breakfast Inn which has been approved for the five year time limit. The variance is for the condition that this could not be a special event in an RS district. Mr. Alberty stated he would agree with Mr. Moody that the Board could not grant a use variance but this request is an accessory use, and that is the way it was approved five years ago. The principal use is for the Bed and Breakfast Inn and the provision that prohibits it in an RS or RE district is what the applicant is seeking a variance for. Mr. Henke asked Mr. Alberty if it was his opinion, under the code, that the applicant can seek that variance. Mr. Alberty stated that is the way it was done before and that is the way it was granted before. If this were a principal use, Mr. Alberty stated he would agree with Mr. Moody. But the argument is going to be surrounded by the fact if this is the principal use, and that may be what the evidence shows, but it certainly could not be; therefore, the Board could not grant a use variance to permit it as a principal use. But the way the request was granted before was as an accessory use to the principal use of a Bed and Breakfast.

Mr. Henke stated that today the Board is addressing the extension of time on the special exception and asked for explanation of the applicant's request to the Board to grant a variance. Mr. Alberty stated the request is to continue the special events as an accessory use to the principal use.

Mr. Van De Wiele asked Mr. Alberty if the time limit would also apply to the variance or is this just because it is time to apply for the special exception. Mr. Alberty stated this is because it would be tied to the five-year special exception, because without the principal use there is no need for a variance.

Mr. Moody stated that he agrees with Mr. Alberty except for one thing. Special events are not an accessory use permitted in the residential RS-2 district. Those uses are specifically stated and listed under Table 2, Section 402 of the zoning code, which lists

accessory uses. Accessory uses are uses which are permitted by right in certain districts with the conditions or limitations that are specified in the zoning code for the utilization of those accessory uses. If this was an accessory use in an RS-2 district, which is what the subject property is zoned, then this request would not be necessary. A Bed and Breakfast is not an accessory use and is permitted by special exception in the RS district. A person cannot piggyback a use or special exception as an accessory use to a Bed and Breakfast in an RS district. The City Council has specifically prohibited the rental or use of said structures, Bed and Breakfasts, for special events when located in an RS or RE zoned district. That is the decision of the legislative body of the City Council. The Board does have the power to grant variances in certain circumstances, i.e., setbacks and other things of that nature. A special event has nothing to do with a hardship. Therefore, this Board has no jurisdiction because the subject property is in an RS-2 district.

Mr. Swiney stated to the Board that this is an intricate legal question, and depending on how the case is discussed this afternoon he might request more time to research the question posed by Mr. Moody, and report back to the Board with the findings.

Mr. Henke asked Mr. Alberty if he had a recommendation. Mr. Alberty stated that the Board could listen to the arguments and it may be a moot point whether this proceeds beyond this point. Basically, the use has been terminated by the extension. Therefore, if the Board does not extend it by approving it, then the use terminates and it is over. Mr. Alberty stated there is a good argument to be made and he feels less comfortable than he did when the application was taken. Unfortunately, the application was not challenged from a legal perspective and the Board does have good grounds to continue if the Board wants to consider extending the time limitation. There is a possibility the Board wants to hear the arguments. There may be elements to this application beyond that where the Board would not even want to consider the extension. The legal issue would only be if the Board decides to extend the use.

Ms. Stead stated that she would like to hear what the people in attendance today have to say. Mr. Henke stated that the Board does need to consider what the people have to say but he would not want to act unless everything is in order.

The Board members stated they would like to hear the people today and if the case is continued, then the audience's statements would not need to be revisited at the next meeting.

Mr. Moody stated that his client objects primarily because the use of the property for special events, particularly the size of some of the events that have been held at the subject property in the past, has caused quite a few problems in the residential neighborhood. There are several photos in the Board's agenda packet showing cars parked on the residential streets and not parked on the subject property, and there is a photo showing cars using other lots and parking on non-paved lots, which are not approved for parking for special events. One of the conditions the Board imposed was

providing on-site paved parking as per the zoning code and an applicant submitted site plan showing parking that was to be provided.

Mr. Van De Wiele asked Mr. Moody if his client has provided information on how often and how numerous the large events are. Mr. Moody stated the large events are usually two or three times in the big wedding seasons, primarily the May/June period and October or fall period because the events are held outdoors; conservatively two or three times a year. Mr. Moody stated that his client's primary objections are the traffic problems, the lack of parking, and the noise created by special events, particularly the larger events. Mr. Moody stated that his client has met with the Christophers to address some of his client's objections and limit some the size of the events and no agreement could be reached.

Ms. Stead stated that the Board had specified a size number. Mr. Moody stated that the Board had made a condition of no more than 50 people at any one event, and the larger events being held are in excess of 100 people. Mr. Christopher even advertises this number on his website.

**David Denham**, 606 North Osage Drive, Tulsa, OK; stated he has lived in his house since 1999. The neighborhood has gone from a crime infested environment to a gentrified neighborhood. Mr. Denham stated he pioneered the neighborhood and he knows what goes on in the neighborhood and has seen a great improvement in the neighborhood. There have been times that cars have been parked on Fairview Street from Edison, almost up to the Tisdale bridge, and down to Osage Drive, which is a common occurrence for the large events. The weddings usually start in April and are held through the end of June, and in the winter there is not much activity. Mr. Denham stated that he has no objection to the Bed and Breakfast but he does object to the special events. Special events parking clog the neighborhood. Guests at special events constantly park on the lawn on the subject property which is a violation of city code, and he objects to the intensity use of the property. One of the main concerns of the Board of Adjustment and the original application of the Christophers was adequate on-site parking. The requirement has been disregarded by the applicant. Mr. Christopher stated in the January 2012 meeting, from which today's case was continued, that he did not build the parking lot because of the recession. There was no recession when the original special exception for special events was granted in 2006. Mr. Christopher has broken the zoning code laws and the parking requirements as mandated by the Board of Adjustment in 2006 and he should not be rewarded. The special events are a disruption to the peaceful enjoyment of one's property. It has been mentioned that bringing people in for these special events is good for repairing the tarnished image of the north side. Any one who drives into the country club neighborhood can see how it has made a comeback and hordes of people are not needed coming into the neighborhood for image repair because it is already a beautiful neighborhood that the residents should be allowed to enjoy in peace.

Ms. Stead asked Mr. Denham if it was his opinion that as many as 100 people attended the events, and Mr. Denham stated affirmatively.

**Edwinia Gilliam**, 569 North Country Club Drive, Tulsa, OK; stated she is opposed to Mr. Christopher being granted another five years. She attended the meeting five years ago and she was afraid of the things that would and it has come to fruition. The traffic and the parking is horrendous during the special events. The stop sign for traffic to get onto Osage Drive from Fairview is obstructed because cars park right up to the stop sign. Whenever a person lives in their home they should have some peace. There is one lady across the street who has events, radio publicized events, and she does not care because her attitude is if Mr. Christopher can do it she can do it. There are some people who are okay with what is happening in the neighborhood but the majority do not want that in the neighborhood because it is an imposition and intrusive. Ms. Gilliam stated that a friend of hers attended the Bridal Fair and the Kennedy Mansion was advertising for their venue. The friend is going to have approximately 200 wedding guests and after speaking with Mr. Christopher, he told her there would be no problem accommodating a wedding of that size. This Board approved the original application in good faith, knowing that Mr. Christopher would follow through with conditions that he promised, but he has not done so. Today he is before this Board to compel the Board again with the promises that have been broken. It is not right. North side gets a negative connotation attached to it but there are a lot of good people who are proud of their homes. We want peace and serenity just like everyone else but we don't have it this neighborhood.

**Sandra Crisp**, 708 North Country Club Drive, Tulsa, OK; stated she and her husband built a new custom-built home in the neighborhood in the last five years, and they must pass the community bed and breakfast to go in and out of the neighborhood to downtown where they work and attend church. She is strongly in favor of the Kennedy Bed and Breakfast. She thinks it is a very good use of the home. It always looks attractive and she has not had a problem navigating the streets. The house just to the northeast of the Kennedy mansion was a showcase designer home a few years ago, and it has now fallen into disrepair. There is another house, where a doll museum used to be, has asphalt parking and that parking is an eyesore but that house has also fallen into disrepair. In 1990 she and her husband spent quite a bit of money restoring an older home on Reservoir Hill which they lived in until five years ago, and that home is like a white elephant now. She is afraid if the Christophers cannot continue their business, they will not find someone who will make good use of the Kennedy mansion as they have. It is not a social service agency nor a group home. It is much different from those things that neighborhood is surrounded with and encroached by in the neighborhood. Ms. Gilliam, who took the petition around the neighborhood, did come to her home and the chief reason she had against the Bed and Breakfast was because the precedent it would set for the neighbor across the street from her. That house is on the northwest corner of Edison and Country Club Drive with a pool and it backs up to the golf course. That house has been having parties that are advertised on the radio with a lot of drinking going into the wee hours of the morning. They involve a lot of chaos. That setting of a precedent is what a lot of the neighbors are concerned about. It would be a disservice to take such a fine establishment from our area. It is not in the middle of

a typical residential area, it is right on the edge so maybe it should be rezoned. She hopes the Kennedy Mansion Bed and Breakfast is not lost.

**Melvin Gilliam**, 569 North Country Club Drive, Tulsa, OK; stated he grew up in the neighborhood and has a lot of history there. The neighborhood has some very important history and he lives there now. This is a residential neighborhood; it is not commercial. These are nice houses and it is not the neighborhood's place to determine if someone can afford to live there. His insurance did increase substantially because of what is happening in the house on the corner. Yes, there will be a precedent set, and the old doll house may be bought with the new owners coming before the Board asking for a variance to have parties because of other houses in the neighborhood. Mr. Gilliam works in banking, in home loans, and he thinks it is odd that the Christophers are now able to get a loan to do something that should have been done a long time ago. Mr. Gilliam pointed out that Mr. Christopher's own attorney even stated, today, that Mr. Christopher cannot stay in business without the special events so does that not make the special events primary? Thus what is primary and what is secondary? The Kennedy Mansion is a beautiful home. Home. It should stay a home and houses in the neighborhood should stay homes. This is a neighborhood for homes.

**Darell Christopher**, 506 West Fairview Street, Tulsa, OK; stated that he did have an opportunity to install the parking five years ago, but there were many major repairs that needed to be completed on the old mansion; i.e., sewage lines. Mr. Christopher did not purchase the property until he had permission to go forward with his plans. At that time it was intended to install parking, landscaping, etc. but many challenges hindered those plans. In five years Mr. Christopher stated he has not received one complaint from anyone in the neighborhood. He has joined the neighborhood association and is committed to doing everything possible to prohibit the illegal swimming parties like at the one house in the neighborhood. Mr. Christopher stated his first step was to go to the neighbors to discuss the plans for the mansion. Secondly, he went to the City to obtain everything needed to proceed with his plans. In five years he has never received a complaint and feels he has been a good neighbor. Mr. Christopher is proud of the type of clientele he brings to the neighborhood to stay at the mansion. Mr. Christopher is proud of the events, and when they are held, they are small. The reason events are advertised for 100 people is because approximately 20% of the guests do not show. It is a marketing technique that is used online. But most of the events have been under 50 guests. Rarely, but during the wedding season which is May, June, September and October, there have been a few events that has exceeded the count of 50 guests. For events there always have been parking attendants hired to park the cars in an orderly fashion. During the past five years Mr. Christopher has weathered ice storms, two years of road construction, and the recession. The mansion is still operating and now can install the required parking. He is asking the Board to give him the opportunity to go forward.

Mr. Henke asked Mr. Christopher how many special events were held in 2011. Mr. Christopher stated that in 2011 there were 50 to 60 special events held. Most of the events were 10 to 20 people. Rarely are there special events over 50 people. Mr.



Henke asked Mr. Christopher how many events were over 50 people. Mr. Christopher stated there were fewer than ten.

Mr. Van De Wiele asked Mr. Christopher to acknowledge that the limitation, when before the Board five years ago, is that there would be zero. Mr. Christopher stated no, he saw that limitation as guidance in what the Board had asked him to do.

Mr. Henke asked Mr. Christopher to tell the Board the maximum number of guests could be accommodated at the Bed and Breakfast at any one time. Mr. Christopher that there are three rooms that are in use with two people per room it would six people, but if the master bedroom were to be used it could be eight people, but the average is one or two guests. Mr. Henke asked Mr. Christopher if he lived at the mansion and he stated that he did.

Ms. Stead stated in the original hearing it was stated that arrangements had been made with a local church for parking for the guests, yet there are letters from neighbors stating that not one car has ever been parked on the church lot. Mr. Christopher stated that arrangements had been made with the church, but when the cars are arranged on the property and a few cars in the street the lot has rarely been needed. Ms. Stead reminded Mr. Christopher that parking on the grass is not permitted. Mr. Christopher stated that his proposed extended parking is to be installed near the church parking lot.

Mr. Van De Wiele asked Mr. Christopher how often there are Bed and Breakfast guests, and Mr. Christopher stated that there are guests on most weekends. The business travelers have dwindled to almost none, which is a trend across the nation. There is an occasional guest through the week.

Ms. Stead stated that the Board wanted to see the Bed and Breakfast succeed but the Board made provisions and allowed five years to fulfill those provisions. That is the reason there was a limit established so there would be an opportunity to accomplish those conditions and they have not been done. Ms. Stead because of this she cannot support the request for a variance. This Board does not give advice nor opinions, there are conditions that are made and those are to be completed. Mr. Christopher stated that he understood what she was saying but he had to deal with reality. He is willing to work with the neighbors and to do whatever is necessary if given the opportunity.

**Joyce Cheri Jordan**, 588 North Guthrie, Tulsa, OK; stated she lives directly across from the Kennedy Mansion. She moved into the house in 1991 and she remembers owners previous to Mr. Christopher. Since he has owned the mansion the property has improved substantially. There are times there are cars parked up and down the street but she has not had a maneuverability issue. She feels that the waters have been muddied a bit because of the illegal issue that is going on on Country Club at the house with the pool. There have been several things that have occurred at that house but as long as Mr. Christopher has owned the mansion there have been no issues of break-ins of the homes and feel safe. Mr. Christopher has done a very good job of trying to maintain his property and guests' environment. Ms. Jordan stated she will not dispute

everything that has occurred today but she stated that Mr. Christopher, in the five years he has been owner of the mansion, has checked with her and asked her if would like to have anything done differently on several occasions. She is glad to have the Kennedy Mansion in the neighborhood because it is well maintained and there are other mansions in the neighborhood that have become dilapidated.

**Bill Hoag**, 585 West Fairview, Tulsa, OK; stated he lives right next to the Kennedy Mansion. Renovations of older homes always begin on the inside working toward the outside and the last thing done is to fix up a parking area or asphalt. It has been heard today that special events cannot be the principal use for an exception. There has been testimony from Mr. Christopher and his attorney essentially saying that the special events are the heart of this entire operation, and that the Bed and Breakfast has basically dried up. Mr. Hoag presented a signed document from the Bridal Fair stating that Mr. Christopher would not have any problem accommodating 150 to 200 guests. When Mr. Hoag first moved into the neighborhood he was shocked to see cars parked all the way up to Tisdale, up Fairview up to Country Club Drive, down Guthrie to Edison and up Osage Drive. Mr. Hoag has a paved parking area to the west of his home, where the Brauners used to park for their special events, and it will accommodate 16 to 20 cars. Mr. Hoag has offered the parking area to Mr. Christopher for free if he would provide some indemnification for any personal injury by anyone on the property holding him harmless. He never provided it. The offsite parking for the Kennedy Mansion is the street and every week the offsite parking or street is being utilized, never the Doll House Museum parking area. Mr. Hoag is not in favor of extending the time limit or approving the variance request. There were two requirements made of Mr. Christopher five years ago, provide a parking lot and keep events to 50 guests. He has not complied with either.

**David Crisp**, 708 North Country Club Drive, Tulsa, OK; stated that he hoped there could be a compromise reached as a neighborhood. Mr. Denham and Mr. Christopher both take excellent care of their property. Mr. Crisp wants the neighborhood to be vibrant. These homes are expensive to maintain because it takes special craftsman to make repairs. There is a legal impediment that needs to be settled before moving this case forward.

**Zach Carpenter**, 480 West Fairview Street, Tulsa, OK; stated he has lived in the neighborhood for about three years. Mr. Christopher has never been a problem neighbor. Traffic is an issue and he would like to have the Board grant Mr. Christopher a little more time to install his proposed parking area.

**Debi Sanditen**, 1611 South Carson Avenue, Tulsa, OK; stated she has known Mr. Christopher since 1973. Mr. Christopher is a very ethical man and it is reflected in his business. The financial environment in the past few years has been a hinderance.

Mr. Van De Wiele informed Ms. Sanditen that the Board could not base any of their decisions on financial hardships.

Ms. Sanditen stated that the downward turn of the economy forced the Christophers to make a choice, and their choice was to maintain their high standards for the mansion and their business.

Mr. Henke stated to Ms. Sanditen that the Board understands everything she has said, and the Board is under the impression that she is in favor of keeping the Bed and Breakfast.

Ms. Sanditen continued to tell the Board that Mr. Christopher was focusing on the neighbors. He had valet parking arranged for during his special events and had to pay for the valet parking thus the church lot was not needed. Mr. Christopher was focused on the parking lot at the time because he was concerned about the neighbors. If the purpose of this meeting is to say the Christophers broke the law then maybe he made a bad decision by doing that. But the choice was to let the business flounder and not be able to pay for other expenses before the parking lot. If the mansion were to be rundown, then business would become nil.

Mr. Van De Wiele stated that no one, including the Board, is trying to say that the Christophers are not nice people.

Ms. Sanditen stated that is not what she is trying to say. She is trying to distinguish whether he broke the law versus the spirit.

Mr. Henke this is to protect the neighborhood and if there had not been any issues there would be no hearing today with all these people that came down here today to protest.

Ms. Sanditen finds it interesting that the mansion has suddenly become an issue. During the five years there was no one to complain. There was no complaint because the Mr. Christopher was having parking performed by valets. He chose to pay for the valets rather than install a parking lot because it was either a short term answer that he could afford to do and still put money back for the parking, and still satisfy the neighbors. It was not because he was trying to break the law nor ignore the Board's recommendation. He was trying to be considerate, trying to maintain the peace in the neighborhood, trying to make the neighbors happy because that is part of his nature. He was focused on the issue, and the issue was that the neighbors do not like all the cars so he had valets park the cars. Up until recently he has not had the money to install a parking lot but recently the economy has become better. During the last five years was the time for the neighbors to complain, not now.

Mr. Van De Wiele stated that this meeting is the public forum in which the citizens have the right to object to Mr. Christopher's request.

Ms. Sanditen stated that she understood, but she is saying the neighbors could have come forward in the last five years with their complaints.

Mr. Henke told Ms. Sanditen that is Mr. Van De Wiele's point, this is the time and place for those complaints to surface. They are not late in their complaints.

Ms. Sanditen stated that it is too bad that the neighbors didn't knock on the Christophers' door because if they had the Christophers would have worked to rectify the situation. This Board is missing the facts.

Ms. Stead stated that the Board is missing nothing, every word has been heard. The Board listens very carefully. If the neighbors could work out their problems the Board's job would be easy. A person cannot appeal this Board's decision to the City Council it must be appealed to the District Court. This Board must swear that the action to be granted will not cause substantial detriment to the public good or impair the purposes, spirit or intent of the code. The intent of this zoning code is not for the Board to lay a burden on others.

Ms. Sanditen stated that she understands all of that, but her point is if the neighbors had been burdened, why didn't they inform the Christophers. Mr. Christopher is ready to install the parking lot and asks that the Board gives the Christophers a reasonable amount of time to accomplish that goal.

**Russell LaCour**, 862 North Waco Avenue, Tulsa, OK; stated he grew up in the Brady Heights area and he had his wedding at the Kennedy Mansion. It was a great decision because the mansion is a great place to have such a function. The Kennedy Mansion is a great place and should not be dismissed just because the parking has not been figured out. The Kennedy Mansion is a place that is good for the neighborhood. It is a place that brings in good people that conveys good things about north Tulsa. Mr. LaCour asked the Board to give Mr. Christopher an extension so he can continue making the Kennedy Mansion a great place for everyone.

Mr. Van De Wiele asked Mr. LaCour how many guests attended his wedding. Mr. LaCour stated there were approximately 45.

**Jerry Goodwin**, 1650 North Waco Avenue, Tulsa, OK; stated he has served, and continue to serve, on the City of Tulsa Rogers County Port Authority for about 17 years. Mr. Goodwin stated that he would be very hard-pressed to find a greater jewel in the community that speaks to the initiative to help revitalize and bring greater value to a part of the community. The Kennedy Mansion is a jewel in the crown of our community, not unlike the Port has been, producing thousands of jobs as well as tens of millions of dollars in economic development. From his experience serving on the Port Authority he has learned where there is a will there is a way in terms of making modifications, in terms of making and providing an opportunity for an economic engine in our community to survive. He would ask the Board to do the very best they can to consider, and to be open to opportunities of where Mr. Christopher can be provided the opportunity to be in compliance. In light of the circumstances that have occurred in the last several years, not everyone has been able and has been privileged to be able to act appropriately in light of the economic conditions. The Board has the opportunity, the Board has the

privilege, the Board has the possibility of helping to send a signal to a couple who came back home from Europe and chose not to just come back home but come back home and reinvest in his community. Mr. Goodwin hopes the Board will give knowledge and credit to his commitment to revitalize the community. It is not as if Mr. Christopher's entity is a public nuisance. It is not as if there is evidence to show there have been violations of certain ordinances. What the Board would consider this to be is a cold case. There is still some degree of latitude; there is still some degree of a possibility to be given some extended time to allow Mr. Christopher to comply. There are not many treasures in north Tulsa and if the Board understands the history of the mansion and it's significance to the community, Mr. Goodwin asks the Board to consider the opportunity for Mr. Christopher to continue the operation of his business.

**Rebuttal:**

Mr. Colt stated the two main issues are the parking and the compliance with the limit on 50 guests at special events. If it is determined by Legal staff that the Board has jurisdiction over this decision Mr. Colt would request a continuance of one month to two months to break ground to show that the Christophers are committed to going forth with the parking lot as stipulated in 2006.

**Comments and Questions:**

Ms. Stead asked staff, after listening to all the testimony, apparently the principal use, as applied for is the Bed and Breakfast. So how can the Board rule that holding special events is an accessory to the Bed and Breakfast? Mr. Alberty stated that is the only way to get there and if the Board rules otherwise, then there is no case. The issue was that it originally was determined that in granting the variance the special events were accessory to the Bed and Breakfast. He thinks there is some serious doubt now that the variance was proper and now may be in jeopardy. Mr. Alberty stated he is going to wait for legal to substantiate that, but that is how the case was arrived at.

Mr. White questioned, on the term "principal use" between the two particular businesses there have been numbers as far as the number of people attending, is the dollar figure ever into it?

Mr. Van De Wiele was also questioning that and he would like to continue this case because he thinks that Mr. Swiney needs to give guidance to the Board. Ultimately it will be this Board's decision to determine which is the principal use but the Board needs guidance on how to determine that. Is it determined by number of events, is it by head count, is it by dollars and the Board needs to know that if the Bed and Breakfast is the principal use, is the special event something that is accessory or something that the Board can approve a variance for. If the Board determines that the Bed and Breakfast is the principal use is the special event something that is accessory. Mr. Van De Wiele would like for Mr. Christopher and his attorney to be able to come back and convince the Board which is the principal use, if it is decided to continue this case. And he wants to allow Mr. Swiney time to perform his research for this case.

**Board Action:**

On **MOTION** of **STEAD**, to **DENY** the request for a Variance to hold special events at an approved Bed & Breakfast Inn extending five-year time limit to permanent (Section 1202.C.8.f) there was no second, the motion failed.

On **MOTION** of **WHITE**, the Board voted 4-1-0 (Henke, Tidwell, Van De Wiele, White "aye"; Stead "nay"; no "abstentions"; none absent) to **CONTINUE** the request for a Variance to hold special events at an approved Bed & Breakfast Inn extending five-year time limit to permanent (Section 1202.C.8.f) to the meeting of February 28, 2012; for the following property:

**34-20-12 PART LOT 3 OF 35-20-12, PART NE SE 34-20-12 DESC AS:BEG 301.5' N & 103' W OF SE/C OSAGE COUNTY-W 256.49'-N 287.51'-E 128.87'-S~E TO A PT 130' W OF 96 TH MERIDIAN-S 139.77' TO POB, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

\* \* \* \* \*

**NEW BUSINESS**

**21374—Ruel Aaron Hux**

**Action Requested:**

Variance of the Bulk and Area 150 foot arterial road frontage requirement in the IL District to permit a lot split (Section 903, Table 2). **Location:** 5920 and 5902 East Admiral Place North **(CD 5)**

**Presentation:**

**Ruel "Dino" Hux**, 14051 West 31<sup>st</sup> Street, Sand Springs, OK; stated there are two commercial properties on one lot. There is an existing business and the other is vacant. It was not realized that it was one lot until he was approached about the purchase of one of the businesses. The business located at 5902 has 54'-0" frontage and is 215'-0" deep.

Ms. Stead asked Mr. Hux if he owned both properties and he confirmed that he did, because she is concerned about the two different access points. When the new owner comes onto the property both access points will be opened.

**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"; none absent) to **APPROVE** the request for a **Variance** of the Bulk and Area 150 foot arterial road frontage requirement in the IL District to permit a lot split (Section 903, Table 2), finding that there are other properties of less than 150'-0" on Admiral Place in the IL zoning district. This will facilitate the use of an existing structure and this will be a 54'-0" wide by 215'-0" deep tract labeled as Tract 1 on page 5.10. Finding by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

**BEG 60S & 326.8W NEC LT 7 TH S318.3 W300 N321.5 E300 POB SEC 3 19 13 LESS S25, BERRYMAN ESTATES, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

**21375—Walter Tempinski****Action Requested:**

**Special Exception** to permit a carport in the required front yard in an RS-3 District (Section 210.B.10.g); **Variance** of required front yard setback from 25 feet to 20 feet (Section 403.A, Table 3); **Variance** of required side yard setback from 5 feet to 3.3 feet (Section 403.A, Table 3); **Variance** of required height (Section 210.B.10.d).

**Location:** 2804 South Cincinnati Avenue East **(CD 4)**

**Mr. Henke recused himself at 2:58 p.m.**

**Presentation:**

**Walter Tempinski**, 3220 South Peoria Avenue, Suite #103, Tulsa, OK; stated he is an architect and represents the property owner. This property is in a neighborhood that has small houses on very small lots. The owner would like to have a carport in the front yard of the property. A carport is designed to match the existing materials of the house and integrates with the existing house. The carport is designed to be attractive and will be compatible with the style of the house and the surrounding neighborhood.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **STEAD**, the Board voted 4-0-1 (Stead, Tidwell, Van De Wiele, White “aye”; no “nays”; Henke “abstained”; none absent) to **APPROVE** the request for a **Special Exception** to permit a carport in the required front yard in an RS-3 District (Section 210.B.10.g); **APPROVE** a **Variance** of required side yard setback from 5 feet to 3.3 feet (Section 403.A, Table 3); **APPROVE** a **Variance** of required height (Section 210.B.10.d). The height as shown on submitted documents shall not exceed 12’-6” at the top plate, and this is per site plan on page 6.17. It is required that the carport match the materials in the original house as near as possible. In granting the variance the Board has found that the existing lot is approximately ten feet shy of that required in an RS district. The Board has found that 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. In granting the variances the Board has found that the size of the lot and the curvature of the lot are conditions and circumstances peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variances to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

**LT 14 BLK 13, SUNSET TERRACE, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

**Mr. Henke re-entered the meeting at 3:07 p.m.**

**21314-A—Stephen Schuller**

**Action Requested:**

**Modification** of previously approved plan to Conceptual Site Plan per BOA-21314.

**Location:** 7600 East 31<sup>st</sup> Street South **(CD 5)**

**Presentation:**

**Stephen Schuller**, 1100 OneOk Plaza, 100 West 5<sup>th</sup> Street, Tulsa, OK; stated this case is before the Board today to review and request approval of a modified site plan. In September the Board approved a special exception for a small in-patient hospice center on 31<sup>st</sup> Street next to Skelly Drive. There were a couple of minor exceptions and variances also permitted to reduce the front yard slightly, to permit an increase in the height of a decorative stucco wall along outside of the building, and a variance of the



setback from abutting R district to the rear, which is a City-owned drainage channel. There is no request to have any of those modified. The building and parking lot are essentially in the same place but they are different from the original plan. The problem with approving variances and special exceptions per plan is if the plan changes, as this has, a person must come back before the Board for approval to a modification to a site plan. The request is to have the Board approve the modified site plan, which shows the parking lot reconfigured and shows the building reconfigured slightly, as a conceptual site plan for the possibility of slight changes.

**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"; none absent) to **APPROVE** the request for Modification of previously approved plan to Conceptual Site Plan per BOA-21314, per conceptual plan on page 7.7. Finding that these conceptual modified plans are in harmony with the original approval; for the following property:

**A TRACT OF LAND THAT IS PART OF THE NORTHEAST QUARTER (NE/4) OF SECTION TWENTY-THREE (23), TOWNSHIP NINETEEN (19) NORTH, RANGE THIRTEEN (13) EAST OF THE INDIAN BASE AND MERIDIAN, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE U.S. GOVERNMENT SURVEY THEREOF, SAID TRACT OF LAND BEING DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF LOT THREE (3), BLOCK ONE (1), MAGNOLIA TERRACE ADDITION, AN ADDITION TO THE CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE RECORDED PLAT THEREOF; THENCE NORTH 01°22'43" WEST ALONG A NORTHERLY EXTENSION OF THE EASTERLY LINE OF MAGNOLIA TERRACE ADDITION FOR 15.00 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF EAST 31<sup>ST</sup> STREET SOUTH; THENCE NORTH 88°45'18" EAST ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, PARALLEL WITH AND 35.00 FEET SOUTHERLY OF THE NORTHERLY LINE OF SECTION 23, FOR 129.99 FEET TO THE POINT OF BEGINNING OF SAID TRACT OF LAND; THENCE CONTINUING NORTH 88°45'18" EAST ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE FOR 572.93 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF U.S. INTERSTATE 44; THENCE SOUTH 01°14'42" EAST ALONG SAID WESTERLY RIGHT-OF-WAY LINE FOR 15.00 FEET; THENCE NORTH 88°45'18" EAST ALONG SAID WESTERLY RIGHT-OF-WAY LINE, PARALLEL WITH AND 50.00 FEET SOUTHERLY OF THE NORTHERLY LINE OF SECTION 23, FOR 97.00 FEET; THENCE SOUTH 42°22'20" EAST ALONG SAID WESTERLY RIGHT-OF-WAY LINE FOR 11.79 FEET; THENCE SOUTH 47°37'40" WEST ALONG SAID WESTERLY RIGHT-OF-WAY LINE FOR 299.79 FEET; THENCE NORTH 87°09'56" WEST FOR**

85.90 FEET; THENCE NORTH 50°21'25" WEST FOR 109.18 FEET; THENCE NORTH 71°03'24" WEST FOR 173.05 FEET; THENCE NORTH 61°40'30" WEST FOR 139.37 FEET; THENCE NORTH 01°14'42" WEST FOR 14.99 FEET TO THE POINT OF BEGINNING OF SAID TRACT OF LAND, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

**21376—Khoury Engineering, Inc.**

**Action Requested:**

Variance of the rear setback in the RS-2 district from 25 feet to 13.5 feet (Section 403.A, Table 3). **Location:** 1829 East 32<sup>nd</sup> Street South (CD 9)

**Presentation:**

**Malek Elkhoury**, 1435 East 41<sup>st</sup> Street, Tulsa, OK; stated he represents the property owner and they want to expand the house and garage. Currently there is a single-car garage and the owners want to have a double-car garage and expand the house by adding a family suite. The proposed expansion means the building will need to be moved northward to allow adequate parking. Also, the grade is such that it is necessary to go up and then flat. If the garage were to move to the south it would block entrance steps leading into the house that is used on a daily basis. The addition will be used only by the family.

**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"; none absent) to **APPROVE** the Variance of the rear setback in the RS-2 district from 25 feet to 13.5 feet (Section 403.A, Table 3), subject to conceptual site plan on page 8.7. The master suite consisting of one story is to be used by the family and not used for any commercial or rental purposes, and is not to contain any implements which would indicate a second residence. The Board has found that the topography slope of the driveway necessitates placement of the new facilities. In granting this variance the Board finds these are circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

**LT 11 BLK 3, BREN-ROSE ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

**Mr. White left the meeting at 3:18 p.m.**

**21377—Lou Reynolds**

**Action Requested:**

Variance to reduce number of parking stalls to 84 stalls for mixed-use center (Section 1211, 1212, 1213, 1214). Location: 1402 South Peoria Avenue East (CD 4)

**Presentation:**

**Lou Reynolds**, 2727 East 21<sup>st</sup> Street, Tulsa, OK; stated the applicant has requested the variance to develop an usual shaped 1.1 acre tract of land on the northwest corner of 14<sup>th</sup> and Peoria. The eastern two-thirds of the property is zoned CH. Specifically the applicant desires to develop the property in accordance with PlanIt Tulsa as a mixed use two-story building in an urban location. There are sidewalks in existence and each sidewalk goes to each of the doorways on the ground level as well as the doorway leading to the second story.

**Mr. White re-entered the meeting at 3:21 p.m.**

There has been considerable amount of communication with the neighbors and there are at least 12 letters stating support of the variance request, which are in the Board's agenda packet. All three of the abutting property owners on the west side are in support of this variance request. The hardship of this request is that code treats all commercial and office uses as if they have the same peak parking demand in order to insure that the peak parking demand is provided for in each principal use. In this two-story mixed use commercial use building there will be multiple tenants with different uses. But imbedded in the code is the assumption that parking demand for each use will peak at the same time, thus the code does not count for the potential for the parking demand to be different and to peak at different times. The code also treat each use as having the same parking requirements. This project is uniquely located in a somewhat isolated portion of a commercial corridor on the west side of Peoria and the south side of the Broken Arrow Expressway. There is no direct vehicular connections into a residential neighborhood for any potential overflow. It will not have a detrimental effect on anyone or the public welfare. It is also in an area that is well-served by the MTTA.

In light of the assumptions within the code regarding peak parking demand the mixed use nature of the two-story commercial building, the inability of any over-flow traffic that would impact on the residential neighborhood, the literal enforcement of the code and it's terms are an unnecessary hardship. This project is very consistent with the comprehensive plan and PlanIt Tulsa.

Ms. Stead asked Mr. Reynolds if the entire building was going to be used as a restaurant. Mr. Reynolds stated that the second story is the only area rented to a restaurant. The intention of the owner is to operate a mixed use facility.

**Interested Parties:**

**Clay Bielo**, 1432 South Newport Avenue, Tulsa, OK; stated he lives in the Mapleview neighborhood and he is in favor of the approval of the variance request. Right now the property is dilapidated and should be replaced. It will be a great avenue to bring in the Pearl District and connect it to Cherry Street and Brookside.

**Cynthia Wright**, 1439 South Owasso Avenue, Tulsa, OK; stated she is the President of the Homeowner's Association for Mapleview on Cherry Street. As an individual and as a Board member she is in support of this project. She feels that lighting and security will be improved in the area. Ms. Wright looks at this project as an opportunity to upgrade both sides of Peoria and to begin a move of new businesses northward on Peoria.

**Jeff Noftsgger**, 1233 South Newport Avenue, Tulsa, OK; stated he is the Tracy Park Neighborhood Association President. Due to time constraints he has not had a board meeting or an association meeting, and was not aware of this meeting until last Thursday. After contacting a few members of the association they have raised a few questions. Mr. Noftsgger asked if the site plan had been approved for the subject property. Mr. Reynolds came forward and stated that the property had been platted and was just recently approved by the Planning Commission. Other questions were where the overflow parking for the building would be established, and if in the future the bottom floor retail becomes another restaurant what becomes of the parking. Other issues are the noise level of the subject property. Mr. Henke stated that the only item before the Board today is a variance request for the parking. Mr. Noftsgger continued stating that the Neighborhood Association would like to see the building be held to conformity of the neighborhood by being of the 1920s or 1930s red brick style. At this date no one has made any derogatory remarks about the project and the association would be in favor of the development.

**Mr. Van De Wiele left the meeting due to business at 3:35 p.m.**

**Chip Atkins**, 1638 East 17<sup>th</sup> Place, Tulsa, OK; stated he owns numerous residential properties in the Swan Lake area. Mr. Atkins stated he is in favor of this project because it is a great project.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **STEAD**, the Board voted 4-0-0 (Henke, Stead, Tidwell, White "aye"; no "nays"; no "abstentions"; Van De Wiele absent) to **APPROVE** the Variance to reduce number of parking stalls to 84 stalls for mixed-use center (Section 1211, 1212, 1213, 1214). It should be noted that regardless of the use this property this approval is limited to 84 spaces. This is subject to conceptual site plan on page 9.8. It is noted that there is an existing sidewalk on Peoria Avenue and if the sidewalk is damaged during construction of the parking lot all damaged shall be repaired by the contractor. The parking lot and all driving surfaces shall be asphalt or concrete. The variance is granted because of the extreme oddities in the shape of the subject property. The variance is also granted taking into effect the fact that mixed use often requires less parking, and that businesses are open at different hours. These are peculiar to the land, structure or building involved in this case, 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 THAT IS PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER (SE/4 NE/4) OF SECTION TWELVE (12), TOWNSHIP NINETEEN (19) NORTH, RANGE TWELVE (12) EAST OF THE INDIAN BASE AND MERIDIAN, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE U. S. GOVERNMENT SURVEY THEREOF, BEING A PART OF THE VACATED PLAT OF BROADMOOR ADDITION AND PART OF THE PARTIALLY VACATED SOUTH OWASSO AVENUE, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO WIT:**

**COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF SOUTH OWASSO AVENUE AND THE SOUTHERLY RIGHT-OF-WAY LINE OF THE BROKEN ARROW EXPRESSWAY; THENCE NORTH 77°06'21" EAST AND ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF THE BROKEN ARROW EXPRESSWAY AND ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF SOUTH OWASSO AVENUE A DISTANCE OF 25.54 FEET TO THE MOST NORTHERLY CORNER OF SOUTH OWASSO AVENUE AS SHOWN ON THE RECORDED PLAT OF MAPLEVIEW ON CHERRY STREET, AN ADDITION TO THE CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE RECORDED PLAT THEREOF AND THE POINT OF BEGINNING; THENCE CONTINUING NORTH 77°06'21" EAST AND ALONG SAID RIGHT-OF-WAY LINE OD THE BROKEN**

ARROW EXPRESSWAY A DISTANCE OF 288.70 FEET; THENCE SOUTH 03°52'13" EAST A DISTANCE OF 58.00 FEET; THENCE NORTH 88°35'35" EAST A DISTANCE OF 1.15 FEET; THENCE SOUTH 03°52'13" EAST A DISTANCE OF 50.01 FEET; THENCE SOUTH 03°39'46" EAST A DISTANCE OF 50.01 FEET; THENCE SOUTH 03°40'03" EAST A DISTANCE OF 50.01 FEET; THENCE SOUTH 88°43'00" WEST A DISTANCE OF 0.36 FEET; THENCE SOUTH 03°30'03" EAST A DISTANCE OF 45.03 FEET; THENCE SOUTH 28°30'21" WEST A DISTANCE OF 18.40 FEET; THENCE SOUTH 88°46'02" WEST A DISTANCE OF 130.75 FEET TO A POINT ON THE EASTERLY LINE OF LOT 3, BLOCK 3, MAPLEVIEW ON CHERRY STREET; THENCE NORTH 01°07'32" WEST ALONG SAID EASTERLY LINE AND ALONG THE EASTERLY LINES OF LOT 2 AND LOT 1 A DISTANCE OF 123.67 FEET TO THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 88°35'40" WEST ALONG THE NORTHERLY LINE OF SAID LOT 1 A DISTANCE OF 155.05 FEET TO THE NORTHWEST CORNER OF SAID LOT 1; THENCE NORTH 01°07'32" WEST ALONG THE EASTERLY RIGHT-OF-WAY LINE OF SOUTH OWASSO AVENUE A DISTANCE OF 87.23 FEET TO THE POINT OF BEGINNING, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

**21378—James Boswell**

**Action Requested:**

Special Exception to allow office use (Use Unit 11) in RM-2 District (Section 401, Table 1); Variance of front yard setback from 10 feet to 4 feet for existing porch (Section 403, Table 3); Variance of any yard abutting a public street from 35 feet to 10 feet (Section 403, Table 3); Variance of side yard setback from 10 feet to 0 feet (Section 403 A, Table 3); Variance of off-street parking landscape requirements abutting street right-of-way (Section 1002.A.2) and abutting residential use (Section 1002.A.3) from 5 feet in width to equivalent square foot area; Variance of parking abutting an R District from 5 feet to 1 foot (Section 1002.A.3); Variance of screening fence for (Use Unit 11) abutting an R district (Section 1211.C.1); Variance to allow ADA van accessible parking space to encroach 10 feet into public Right-of-Way (Section 1301.A); Variance of off-street parking setbacks in R District (Section 1302.B, Table 1); Variance of required parking stalls from 12 spaces to 11 spaces (Section 1211.D); Variance to allow increase in cubic content to non-conforming structure (Section 1405.A).

**Location:** 1402 South Trenton (CD 4)

Mr. Henke asked Ms. Back to give a quick synopsis of the case because he thought the Variance requesting allowance for the increase in cubic content to a non-conforming structure was the request to prompt such a lengthy application. Ms. Back stated there had been several meetings with Mr. Boswell regarding this project. This project is in the RM-2 district and originally the bulk and area requirements were determined to be out of Section 400. In a later meeting it was determined that in Section 400 if a proposed office use is in the RM-2 district it refers to the OM district, therefore, the application is governed by the codes in Section 600. This fact was determined after the application

was advertised. The variances that deal with the front yard setback, the yard abutting a public street, and the side yard setback are actually now governed by Section 600. Those requests will need to be readvertised. Also, in working with the City there were three Letters of Deficiency received. The second and third LODs were received after this case was advertised in the newspaper and the mailings were complete. The City added three additional relief requests into the LOD. Those requests are out of Section 404.F and they are in the LOD that had the number three handwritten on it that is in the Board's agenda packet. Those are the variances that need to be readvertised. Referencing the last variance, the variance to allow the increase in cubic content to a non-conforming structure, it was determined by City staff that in adding the second floor to the non-conforming structure the City believes that the increase in the cubic content, by following the wall straight upward, is believed that the variance actually triggered bringing the building up to code. Ms. Back stated that she and INCOG staff had interpreted that the applicant was not increasing the non-conforming footprint, but just taking the building up to a second story. The City believes that the second story needs to be constructed to where the required setbacks would be in order for the building to stay within the non-conforming structure status.

Mr. Alberty stated that the issue is if the Board can look at this and approve what is being requested. Everything else is very technical in nature and it is only because we had quoted the wrong section of the code. If the Board looks at the special exception that is the key. This is a non-conforming structure. It was formerly a fire station and later an office building that housed City offices. If the Board can approve the special exception all the other things are due to the fact there is new construction. If it were not for the new construction, everything would have been folded into the special exception due to the fact that it is a non-conforming structure. To simplify the issue, it is basically a request to utilize an existing building and change the use with some additional construction added to a second floor. That is what triggered all these variance requests, because it is new construction. If the Board can approve the special exception then INCOG will readvertise the proper quotes within the code and bring it into conformance to the relief needed.

Ms. Stead asked if Mr. Boswell needed an access agreement with the City regarding the encroachment into the right of way. Mr. Boswell stated that he did not believe so because it is an existing driveway and there are similar driveways in the area.

**Presentation:**

**James Boswell**, 1305 East 15<sup>th</sup> Street, Suite #201, Tulsa, OK; no presentation was made.

**Interested Parties:**

**Jot Hartley**, Tulsa Development Authority, 201 West 5<sup>th</sup> Street, Suite #581, Tulsa, OK; stated that the Tulsa Development Authority has been charged by the City to sell the subject property, and a sale has been negotiated to Mr. Boswell and Mr. Clark. These variances are a condition to the contract. If the Board approves them then closing can proceed.

**Chip Atkins**, 1638 East 17<sup>th</sup> Place, Tulsa, OK; stated he was on the committee that chose the projects for the subject property. This is a great project for the area, and he looks forward to this project being approved.

**Joshua Walker**, 1325 East 15<sup>th</sup> Street, Suite #200, Tulsa, OK; stated he is a fellow Cherry Street property owner, and this project would be a catalyst to further develop Cherry Street on the 14<sup>th</sup> Street corridor. Mr. Walker stated he is in favor of the proposed project and would like to see all the requests approved today.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **STEAD**, the Board voted 4-0-0 (Henke, Stead, Tidwell, White "aye"; no "nays"; no "abstentions"; Van De Wiele absent) to **APPROVE** the **Special Exception** to allow office use (Use Unit 11) in RM-2 District (Section 401, Table 1); **APPROVE** a **Variance** of off-street parking landscape requirements abutting street right-of-way (Section 1002.A.2) and abutting residential use (Section 1002.A.3) from 5 feet in width to equivalent square foot area; **APPROVE** a **Variance** of parking abutting an R District from 5 feet to 1 foot (Section 1002.A.3); **APPROVE** a **Variance** of screening fence for (Use Unit 11) abutting an R district (Section 1211.C.1); **APPROVE** a **Variance** to allow ADA van accessible parking space to encroach 10 feet into public Right-of-Way (Section 1301.A); **APPROVE** a **Variance** of off-street parking setbacks in R district (Section 1302.B, Table 1); **APPROVE** a **Variance** of required parking stalls from 12 spaces to 11 spaces (Section 1211.D); **APPROVE** a **Variance** to allow increase in cubic content to non-conforming structure (Section 1405.A). The Board would like to continue this case, #BOA-21378, to February 14, 2012 to request additional relief as advertised and if needed. In granting the special exception the Board has found 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. In granting the variances the Board has found that this non-conforming structure has extraordinary and exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variances to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan. This is subject to conceptual plan on page 10.15; for the following property:

**LTS 21 & 22 & VAC W10 TRENTON ON E BLK 12, FOREST PARK ADDN RE-AMD,  
CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**



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## **OTHER BUSINESS**

### **21373—Shadow, LLC/Gary Larson**

Case was withdrawn; applicant to file for a PUD Minor Amendment. The applicant is requesting a refund for the Board of Adjustment application fees in the amount of \$707.00.

#### **Board Action:**

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Stead, Tidwell, White “aye”; no “nays”; no “abstentions”; Van De Wiele absent) to **APPROVE** the request for a refund of \$707.00.

### **21375—Walter Tempinski**

Applicant requested relief that is not needed. Staff is recommending a refund of \$50.00.

#### **Board Action:**

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Stead, Tidwell, White “aye”; no “nays”; no “abstentions”; Van De Wiele absent) to **APPROVE** the request for a refund of \$50.00.

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## **UNFINISHED BUSINESS**

**This case was carried forward from the beginning of today’s meeting, because the applicant was not present. The applicant is still not present. The Board has decided to rule on the case today.**

### **21360—Esperanza Sanchez**

#### **Action Requested:**

**Variance** to exceed from 562 square feet to 780 square feet in the RS-3 District for accessory buildings (Section 402.B.1.d). **Location:** 1049 North Sandusky Avenue East **(CD 3)**

**Presentation:**

The applicant is not present; no presentation was made.

Mr. White stated the subject property is a residence and according to Mr. White's records there is a 1963 plat for the property, which is prior to the zoning code.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **STEAD**, the Board voted 4-0-0 (Henke, Stead, Tidwell, White "aye"; no "nays"; no "abstentions"; Van De Wiele absent) to **APPROVE** the request for a **Variance** to exceed from 562 square feet to 780 square feet in the RS-3 District for accessory buildings (Section 402.B.1.d), subject to site plan on page 2.8. In investigating this it has been found that the second dwelling on this property, shown as 4416 East Latimer Street, is depicted on a plat as early as 1963, well before the current zoning code. In granting this variance this is extraordinary or exceptional conditions or circumstances, the literal enforcement of the terms of the current 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. Although the Board has approved this as conceptual plan the size of the second accessory building shall not exceed 15'-0" x 12'-0" and shall be built per code in other respects, i.e., as to height, etc.; for the following property:

**N. 74' OF W1/2 OF LT 1 BLK 1, MARYLAND GARDENS ADDN, WESTROPE ACRES, WESTROPE ACRES SUB L15-20, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

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**OTHER BUSINESS**

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**Request for Interpretation:**

In September 2011, the Office of Development Services made a **Request for Interpretation** regarding crematories as an accessory use. Specifically, can a crematory be considered an accessory use, customarily incidental and subordinate to a funeral home (Use Unit 11)?

The Board provided the interpretation about a crematory as an accessory use to a funeral home, but they did not provide an interpretation on the **Request for Interpretation** regarding an animal (small animal/pet – 200 lb or less) crematory being considered as an accessory use to a funeral home (Use Unit 11), a kennel (Use Unit 15), or a veterinarian clinic (Use Unit 11).

The issue has come up again and staff needs to make a **Request for Interpretation** regarding an animal (small animal/pet – 200 lb or less) crematory being considered as an accessory use to a funeral home (Use Unit 11), a kennel (Use Unit 15), or a veterinarian clinic (Use Unit 11).

According to the zoning code a crematory as a principal use is classified within Use Unit 2 – Area Wide Special Exception Uses.

In comparison:

Incineration, Reduction of Dead Animals, Garbage, Refuse as a principal use is classified as Use Unit 27 – Heavy Manufacturing.

Rendering Plant as a principal use is classified as Use Unit 27 – Heavy Manufacturing.

Abattoir (slaughter house) as a principal use is classified as Use Unit 27 – Heavy Manufacturing.

### **Relevant Case History:**

#### **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 **APPROVE** the Request for Interpretation from the Office of Development Services stipulating that human crematories be adopted as an accessory use to a collocated primary funeral home; that they are in compliance with the state statute requirements, particularly Title 59 and the Office of Administrative Code Chapter 252:100-25.

**BOA-21094**; on 6.8.10 the Board ***approved*** a *Special Exception* to permit a crematory (Use Unit 2) use in the CS district (Section 701); to permit a crematory in coordination with an existing funeral home on property located at 1916 South Sheridan Road.

Please refer to the January 17, 2012 letter from Mr. Luke Wright, Serenity Funerals and Crematory.

Before Mr. Wright began speaking Mr. Henke informed the Board and Mr. Wright that prior to Mr. Van De Wiele's departure from the meeting, he asked that the Board wait to provide an interpretation until the next meeting. Mr. Henke told Mr. Wright he was welcome to make his comments to the Board today.

**Presentation:**

**Luke Wright**, 4170 East Admiral Place, Tulsa, OK; stated the animal crematory he is proposing is due to requests from families he has been serving for the last three years. He has done a lot of research on human crematories prior to establishing Serenity Funeral Home, and came to the Board of Adjustment to have his human crematory established in 2011. The animal incinerator is just as advanced as the human crematory. The animal incinerator will produce no emissions and the EPA approves it. The animal crematory will be in a separate building from where the human crematory is located.

Mr. White asked Mr. Wright if the design, manufacture, installation and operation of an animal crematory the same as a human crematory. Mr. Wright stated that it is. The unit he is looking at has three chambers, and there will be a completely separate burner that does nothing but purify the emissions prior to their release out of the stack. The only way a crematory can produce emissions is through operator error or something is placed in the crematory other than body remains it will produce an emission. But the heat is so hot in the secondary chamber the emission is contained in the after burner before being purified and emitted.

Mr. White asked if inspections were monitored by a State agency or another entity to guarantee everything is being performed correctly. Mr. Wright stated, to his knowledge, there is no monitoring of animal crematories but the Oklahoma Funeral Board monitors his human crematory. The human crematory will be on the same property as the animal crematory. Mr. Wright does not want to jeopardize his funeral business for families to accommodate a pet crematory.

Mr. Wright stated there is another pet crematory located in Tulsa. It is called Companions Forever and is located south of the Broken Arrow Expressway on 46<sup>th</sup> Street just off Memorial. It is strictly a pet crematory.

Ms. Stead asked staff if what the Board was to look at is strictly a pet crematory in connection to a funeral homes or a human crematory. Ms. Back stated that is her understanding of the request. Ms. Back stated that the different examples listed in the request for interpretation were asking whether a pet crematory is considered an accessory use to a funeral home, if so it is a Use Unit 11. If it an accessory use to a kennel then it would be a Use Unit 15. If it were an accessory use to a veterinary clinic then it would be a Use Unit 11. Or should the pet crematory be taken down in terms to the heavy manufacturing or Use Unit 27. What is being asked for today is an interpretation of what is it and where can it be placed, what accessory use can it be associated with.

Mr. Henke told Mr. Wright if the interpretation request were to be continued to the next Board of Adjustment meeting, where Mr. Van De Wiele will be in attendance, it would come up for discussion the first part of the meeting would he be able to attend that meeting? Mr. Wright stated he could attend the next meeting.

Mr. Swiney asked Mr. Wright how frequently he is asked to cremate pet remains. Mr. Wright stated he was not sure but about five a month without even marketing a pet crematory. Mr. Swiney suggested that someone from the City licensing department, and possibly a veterinarian be present.

Ms. Back stated that Mr. Wright currently has an application in for rezoning his business to heavy industrial that would be needed to have Use Unit 27. However, it was requested by INCOG staff that this be brought back as a Request for Interpretation because the industrial zoning may not be granted if it were to proceed forward.

**Board Action:**

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Stead, Tidwell, White "aye"; no "nays"; no "abstentions"; Van De Wiele absent) to **CONTINUE** the Request for Interpretation to the meeting of February 14, 2012.

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**NEW BUSINESS:**

None.

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**BOARD MEMBER COMMENTS:**

Mr. Alberty wanted to clarify for the Board that Mr. Wright's request for interpretation will not be an interpretation specific to Mr. Wright's case. An interpretation would apply across the board because it is in the code.

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There being no further business, the meeting adjourned at 4:20 p.m.

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

2/14/12  
Frank X. Henke, Jr.

Chair