

BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1065
Tuesday, February 28, 2012, 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 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, February 23, 2012, at 4:24 p.m., as well as at the Office of INCOG, 2 West Second Street, Suite 800.

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

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

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 February 14, 2012 Board of Adjustment meeting (No. 1064).

NEW BUSINESS

21392—Roy Johnsen

Action Requested:

Special Exception to permit a moderate manufacturing use (Use Unit 26) within an IL district (Section 901). **Location:** NE/c of North Osage Drive and West Apache Street (CD 1)

Presentation:

Roy Johnsen, Williams Tower One, One West 3rd Street, Suite 1010, Tulsa, OK; he requested a continuance to the March 13, 2012 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 Special Exception to permit a moderate manufacturing use (Use Unit 26) within an IL district (Section 901) to the meeting of March 13, 2012; for the following property:

A tract of land located in the E/2 of Section 22, T-20-N, R-12-E of the Indian Meridian, Osage County, State of Oklahoma, according to the Official U.S. Government Survey thereof, more particularly described as follows: Commencing at the northeast corner of the NE/4 of Section 22, T-20-N, R-12-E; Thence S 00°40'05" W along the east line of the NE/4 of Section 22 a distance of 876.32 feet; Thence N 89°19'55" W perpendicular to the east line of the NE/4 of Section 22 a distance of 34.63 feet to the westerly right of way of the easterly portion of Parcel 21.0, Gilcrease West Expressway, as recorded in Book 1398, Pages 0056-0083, in the Osage County Clerk's office, and the "Point of Beginning"; Thence S 00°32'54" W along the westerly right of way of the easterly portion of said Parcel 21.0 a distance of 793.82 feet; Thence S 25°33'19" W along the westerly right of way of the easterly portion of said Parcel 21.0 a distance of 1065.57 feet to the north line of the SE/4 of Section 22; Thence continuing S 25°33'19" W along the westerly right of way of the easterly portion of said Parcel 21.0 a distance of 270.43 feet; Thence S 45°33'19" W along the westerly right of way of the easterly portion of said Parcel 21.0 a distance of 661.44 feet to the most southerly north right of way of L. L. Tisdale Parkway; Thence N 89°04'43" W along the most southerly north right of way of L. L. Tisdale Parkway a distance of 84.58 feet to the easterly right of way of Osage Drive; Thence N 00°01'12" E along the easterly right of way of Osage Drive a distance of 192.93 feet to the easterly

right of way of the westerly portion of Parcel 21.0, Gilcrease West Expressway, as recorded in Book 1398, Pages 0056-0083, in the Osage County Clerk's office; Thence S 89°54'57" E along the easterly right of way of the westerly portion of said Parcel 21.0 a distance of 57.87 feet; Thence N 00°05'03" E along the easterly right of way of the westerly portion of said Parcel 21.0 a distance of 1170.68 feet; Thence N 30°17'38" E along the easterly right of way of the westerly portion of said Parcel 21.0 a distance of 729.97 feet; Thence N 05°40'35" E along the easterly right of way of the westerly portion of said Parcel 21.0 a distance of 370.45 feet; Thence N 08°28'22" W along the easterly right of way of the westerly portion of said Parcel 21.0 a distance of 284.41 feet; Thence N 28°07'26" W along the easterly right of way of the westerly portion of said Parcel 21.0 a distance of 125.78 feet; Thence N 29°08'22" E along the easterly right of way of the westerly portion of said Parcel 21.0 a distance of 325.25 feet to the westerly right of way of the easterly portion of Parcel 21.0, Gilcrease West Expressway, as recorded in Book 1398, Pages 0056-0083, in the Osage County Clerk's office; Thence S 63°00'08" E along the westerly right of way of the easterly portion of said Parcel 21.0 a distance of 313.85 feet; Thence S 49°59'04" E along the westerly right of way of the easterly portion of said Parcel 21.0 a distance of 171.20 feet; Thence N 51°35'52" E along the westerly right of way of the easterly portion of said Parcel 21.0 a distance of 62.94 feet; Thence S 49°59'04" E along the westerly right of way of the easterly portion of said Parcel 21.0 a distance of 15.00 feet; Thence S 43°37'52" E along the westerly right of way of the easterly portion of said Parcel 21.0 a distance of 65.00 feet; Thence S 51°35'52" W along the westerly right of way of the easterly portion of said Parcel 21.0 a distance of 69.41 feet; Thence S 37°56'37" E along the westerly right of way of the easterly portion of said Parcel 21.0 a distance of 190.45 feet; Thence S 19°12'34" E along the westerly right of way of the easterly portion of said Parcel 21.0 a distance of 121.17 feet; to the "Point of Beginning". Said tract contains 1,926,250 square feet or 44.2206 acres.

The non-astronomic bearings for said tract are based on an assumed bearing of S 00°40'05" W along the east line of the NE/4 of Section 22, T-20-N, R-12-E of the Indian Meridian, Osage County, State of Oklahoma, according to the Official U.S. Government Survey thereof, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

UNFINISHED BUSINESS

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)

Mr. Henke stated there is a legal opinion by Mr. Swiney that needs to be brought forward before this case is heard. The legal opinion is in the Board's agenda packet on page 2.114. Mr. Swiney stated that the question presented at the previous Board of Adjustment meeting was whether or not the Board of Adjustment had the authority in 2006 to grant the variance under consideration. This was a variance to allow a bed and breakfast to conduct special events on site. After research Mr. Swiney advised the Board that they did have and still do have the authority to grant the variance. Under the general authority of the Board of Adjustment, as stated in case law, a variance extends authorization to the owner to use his property in a manner otherwise forbidden by a zoning enactment. Therefore, Mr. Swiney advises that the Board of Adjustment was within its rights to grant the variance.

With that said, Mr. Henke stated that the testimony that is going to be heard today is to decide whether or not the special events are accessory or the principal use of the bed and breakfast. Mr. Swiney gave affirmation to Mr. Henke's statement, but wanted to stipulate that special events are not anywhere defined in the code and they are not listed as principal use. However, the decision as to whether special events could be a principal use would be a question of fact which the Board of Adjustment would and could decide.

Mr. Van De Wiele asked Mr. Swiney if it is discovered that the property has become more of an event center and less of a bed and breakfast establishment, does that mean the Board does not have the authority to grant the variance for that use. Mr. Henke stated that if the Board finds that the principal use is an event center and not a bed breakfast, it becomes a use variance the Board cannot grant. Mr. Swiney agreed.

Mr. Henke stated the Board was ready to hear the applicant and the interested parties, and that the comments should be limited to the facts the Board can and will use to determine whether or not the principal use is a bed and breakfast or an event center.

Presentation:

Bill LaFortune, 2100 South Utica Avenue, Suite 210, Tulsa, OK; stated he is an attorney representing Mr. and Mrs. Christopher. Mr. LaFortune told the Board that he has just recently been retained by the Christophers, but he has had time to review the extensive, thorough and comprehensive staff report. In looking through the minutes, Mr. LaFortune told the Board that he would like to address Mr. Christopher's failure to comply with the parking condition that was imposed in 2006. Mr. Christopher was the person who filed the application for the five-year review, not a protestant or anyone else. A person that has something to hide or conceal does not file an application for a public hearing on the issues. Mr. Christopher believed that he would come before the Board, detail what has transpired from his prospective and everything would be okay. The recession was mentioned in the last meeting as a reason as to why he had not completed the parking lot. That is still a valid reason. The recession hit everyone hard. What was not mentioned, and it is relevant to the Board's decision, is that Mr. Christopher was dealing with his mother's terminal illness. That illness began in 2006 and ended in 2011. Much of his commercial and personal resources went into assisting

his mother that may have been allotted to the parking lot. In 2011, there were 57 special events held at the Kennedy Mansion. The reality of special events is an occasional wedding, corporate luncheons, holiday parties, and couples retreats all held inside the mansion and they are just a few of the events that comprise the 57 special events.

Mr. Van De Wiele asked Mr. LaFortune for a ballpark percentage of income derived from the special events versus the income from people renting a room at the bed and breakfast.

Mr. LaFortune stated that Mr. Christopher wants to comply with the conditions of 50 persons per event and install the parking lot. He wants to move forward if the Board decides the bed and breakfast is the principal use. The following facts will clearly establish that the bed and breakfast is the principal use for the Kennedy Mansion. First, the Kennedy Mansion rented 582 bed and breakfast rooms in 2011. That is four bedrooms, a total of five beds in the four bedrooms, which calculates to ten guests. That would 582 rooms with two persons per room, or 1,164 bed and breakfast guests in 2011. Also under consideration would be the handling of check-in and check-out of a thousand guests or more; providing history of the building; tours of the building for the guests; concierge service; gourmet breakfast preparation; housekeeping of the rooms; all of this helps comprise the principal use. The mansion's gross revenue for 2011 is approximately two to one or six-figure revenue.

Ms. Stead asked Mr. LaFortune to express a percentage figure, because the previous attorney had stated, and Mr. Christopher has also stated, that the bed and breakfast could not exist without the special events. That is an important statement to this Board.

Darell Christopher, 506 West Fairview Street, Tulsa, OK; stated that the bed and breakfast accounted for approximately 60% to 70% of the revenue with the remainder coming from the special events. As to the statement that the bed and breakfast could not exist without the special events, it was meant that without the 33% revenue created by the special events would truly hurt the mansion.

Ms. Stead asked Mr. LaFortune to explain his calculations for the 582 room rentals, because her quick calculations of five beds and 52 weeks in a year means someone slept on cots. Mr. LaFortune stated that 582 bed and breakfast rooms were rented. Mr. Henke stated that he calculated it to be a little more than eleven rooms or eleven nights.

Francois Christopher, 506 West Fairview, Tulsa, OK; stated there is one bed in each room with two persons per room with five bedrooms equaling ten guests per night. Ms. Stead asked if Ms. Christopher was telling the Board that she had rented every room during every weekend of the year but also other nights. Ms. Christopher stated that also special event clients rent the rooms. Mr. Van De Wiele stated that he calculated it to be about 12 rooms per week.

Mr. LaFortune stated that the bed and breakfast is open seven days and nights a week. When the Board looks at principal versus accessory, this mansion is always available to bed and breakfast customers all year, every day, every month for twelve months. The primary time for special events is between May and the end of October, making the special events a seasonal accessory use. There are other occasions for special events, i.e., in December there were seven special events for holiday parties for small companies, which apply toward the 57 special events in 2011.

Ms. Stead stated that when the Board approves anything they must be sure that it is not a burden on the neighborhood, and that is a large issue in this case. This Board has been told by staff that when initial was rendered special events could be accessory use. Based on that advice the Board gave their approval in 2006. The Board seldom imposes a time limit, which was done in this case. The Board imposes time limits on a case when they think the request is not going to be a compatible fit with the neighborhood. Ms. Stead does not think the Kennedy Mansion is a compatible fit. A whole neighborhood has been disturbed. Mr. and Mrs. Christophers' characters were never and have never been in doubt. The fact that they operate a first-class facility was never in doubt. Personally, Ms. Stead would like to take the mansion out of the R district and place it somewhere else so it could continue. It is a beautiful facility with some wonderful events held there. Most of the letters received by the Board are not speaking to the special events, they pertained to the bed and breakfast. All the letters, from individuals and businesses, were very complimentary. But she advised that this Board has to look at the zoning.

Mr. LaFortune was pleased to hear of the complimentary letters and agreed with Ms. Stead, but wanted to make one more point about principal use and accessory use. The Kennedy Mansion is approximately 8,500 square feet total. The activity room is approximately 665 square feet. If the mansion is 8,500 square feet and the activity room is 665 square feet that is only 8% of the total square footage.

Mr. Henke stated that Mr. LaFortune had stated earlier that the rooms rented for \$250.00 per night on an average, and he asked Mr. LaFortune if that figure was a true number, because that seems to be aggressive for an average. Mr. Christopher came forward and stated that the room rates, for the night, are \$189.00 plus tax. There are additional fees such as late check out, room service, and complimentary massage therapy for couples. What was attempted was to average all of those activities. The Country Club Suite and The Presidential Suite rent for \$295.00 plus tax per night. Mr. Henke asked Mr. Christopher if he could rely on the \$250.00 figure. Mr. Christopher stated with the addition of room service and things of that nature he ball-parked the rate at \$250.00 per night. If the extras were to be deducted the room rate would average out at approximately \$220.00 per night.

Ms. Stead stated to Mr. Christopher that the neighbors who had complained have no problem with the bed and breakfast operation. It is the special events that cause the problems. Mr. Christopher stated that in getting to the specifics of the neighbors' complaints, he is ready to remedy that situation in anyway whatsoever.

Mr. LaFortune stated that, after some quick calculations, the bed and breakfast is approximately 67% of the revenue for the mansion. In the definitions of the zoning code, there is no definition for principal use except for restaurants, and in that definition it stipulates that 75% of the square footage of the building must be used; otherwise the establishment is not classified as a restaurant. Mr. LaFortune uses that analogy because if the mansion is 8,500 square feet and the activity room is 665 square feet, that means the bed and breakfast is principal use. Mr. LaFortune believes this Board has the full ability to protect the neighborhood from street parking and traffic congestion. Mr. LaFortune requests that the Board rule this is a bed and breakfast principal use with special events being held on the premises as an accessory. Also to continue the temporary variance for an additional 90 days, or more, and then bring it back before the Board for review. In 2006, this Board found this neighborhood to be a diverse neighborhood and that it is not the typical residential neighborhood. It is bordered by all multifamily and other types of districts that allow for special events. Again, Mr. LaFortune stated Mr. Christopher has met all the previously imposed conditions, and has agreed to maintain the special events to 50 guests or less. Mr. LaFortune requests the Board to grant another 90 days to the temporary variance to meet the parking lot condition that was set forth in 2006.

Mr. Van De Wiele asked if the Centenary United Methodist Church, that has offered the use of their parking lot, was located on the opposite side of the L. L. Tisdale Parkway from the Kennedy Mansion. Mr. Christopher came forward and stated that there are three parking lots located on Denver near Golden Street that the church has offered.

Mr. Van De Wiele told Mr. LaFortune that after reviewing the conditions placed on the bed and breakfast in 2006 the parking lot is not the only compliance issue. Mr. Van De Wiele stated that originally there was to be a limit of four guest rooms in the mansion, and the advertising material that he saw showed there were five guest rooms plus another two-room cottage. The special events were to be limited to a maximum of 50 guests. There is evidence in the materials that there is advertising up to 120 guests and there is a letter stating they are having a 200 guest wedding. The parking lot was never completed. The valet service was mentioned but Mr. Van De Wiele cannot find where that was utilized. Another requirement was that meals be served to bed and breakfast guests only, and there was mention of corporate luncheons being held. Mr. Van De Wiele stated that it does not appear that any of the requirements were adhered to, so the suggestion of granting an additional 90 day temporary variance is questionable because the Board may not truly know the conditions placed on the bed and breakfast are being obeyed.

Mr. Christopher came forward and stated to the Board that he is willing to do whatever is necessary to show that the bed and breakfast is in compliance. In answer to the question posed about the cottage, Mr. Christopher stated that there is an additional cottage on the property but it is not used, because it is not part of the bed and breakfast and has a separate address of 506 ½ West Fairview. The cottage has been part of the wedding package. In answer to the fifth room, it is a room that shares a bath and

because there is a shared bath with another bedroom, it is not sold apart but considered an additional bed to the one room. Mr. Christopher stated that everything that has been advertised on the web page has been corrected, and he is ready to show the Board anything and everything that is necessary for compliance.

Mr. Henke stated that what he has focused on is what the primary use is, and what the accessory use of the bed and breakfast is. When requirements are placed on applicants they are done so to protect the neighborhood, as was done in this case originally. The Board never likes to hear that an applicant has not complied with the requested conditions. What Mr. Henke is mostly concerned about is will there be ongoing events, such as the events that have been happening in the past that have changed this location into an event center, versus the bed and breakfast establishment.

Interested Parties:

John Moody, Attorney, 6004 South Marion Avenue, Tulsa, OK; stated he is representing Mr. David Denham. This case is originally before the Board because of an application for a special exception for a bed and breakfast in a residential district. The provisions in the Tulsa zoning code dealing with residential districts provide that Use Unit 2, which is an area-wide special exception use, might be permitted in a residential district subject to the Board of Adjustment approving a special exception as stated in the zoning code subject to the conditions for that specific special exception. Use Unit 2, Section 1202.C.8 deals with the conditions for the Board of Adjustment granting a special exception for a bed and breakfast in a residential district. The Board of Adjustment may permit structure(s) to be rented for special events provided, however, that the rental use of said structure(s) for special events when located in an RS or RE zoning district is prohibited. When the Board is approving a special exception they can only approve the special exception if it meets the conditions specifically stated by the legislative body, the City Council, and the zoning ordinance for each special exception. If the conditions in a special exception are not complied with, as set forth in the ordinance a person is not entitled to the special exception. The Board approved a special exception for the bed and breakfast and his client has no problem with the bed and breakfast in the RS district. Where the problem arises is the rental or use of said structure for special events, and that is what has raised all the issues. In regards to the City Attorney's opinion, Mr. Moody is basically in agreement, because the Board does have the authority to grant a variance. The City Attorney has cited a particular case, *Nucholls vs. City of Tulsa*, because it dealt with the zoning code in 1971, which prohibited the Board of Adjustment from granting a variance for principal use. However, the State Enabling Act, under Title 11 where the City gets its zoning authority and creates the Board of Adjustment, did not contain such a provision. The court said the assailable question in this is whether or not the city ordinances prohibiting the principal use variance controls the state statute empowering the Board of Adjustment to grant variances. Also, the court said, specifically, had it been the intent of the legislature to permit restriction by city ordinance of use Eleven Oklahoma Statute 1971, Section 410, could have been amplified to include matters enumerated after consideration of the Oklahoma Zoning Act it is not believed it was the legislative intent to permit cities by ordinance to restrict and disempower Board of Adjustment rights to grant use variances.

That was in 1977. In Oklahoma Statute 511 the Supreme Court held the state statute controls over the local ordinance. At that time, as was pointed out, it did not restrict the Board's powers to grant use variances. Primarily, the state legislature in 1984 did amend that same statute to specifically provide them provided, however the Board shall have no power to authorize variances as to use except as provided in paragraph four; paragraph four deals with on-site oil and gas applications. The Legislature in 1984 specifically amended the State Enabling Act to provide that the Board shall have no power to authorize variances, which means, based on the Nucholls vs. City of Tulsa case, which is no longer valid law. The state statute was amended so Nucholls no longer applies as to the principal for the Board of Adjustment may grant use variances. Mr. Moody takes the position, just as the Tulsa Zoning Code states, the Board may not grant a variance for principal use.

The Board asked Mr. Moody to state any facts that he may have in regards to the bed and breakfast, i.e., anything showing that the Kennedy Mansion grosses more than or less than \$75,000.00 on the special events because it is known how many rooms were rented last year. Mr. Moody stated that he cannot present anything to the Board relating to how much money Mr. Christopher made or how much money Mr. Christopher did not make in 2011 because that is not relevant. Mr. Moody understands the Board is attempting to determine whether the bed and breakfast is an accessory or principal use, it is neither. It is prohibited. It does not matter. Mr. Moody stated that a special event can be a rodeo or a barbecue for 500 people or a party celebrating a wedding anniversary. A special event cannot be defined.

Mr. Van De Wiele asked Mr. Moody if he or his client could give the Board an approximate number of how many large events held at the Kennedy Mansion in 2011. Mr. Moody deferred to his client.

David Denham, 606 North Osage Drive, Tulsa, OK; stated that he appreciates the questions the Board is asking today. He understands the Board was deluged with letters of support from the public but this is not a popularity contest; this is the law. The bed and breakfast is affecting him, the residents of the neighborhood and the peaceful enjoyment of the neighborhood. The zoning code stipulates that there should be no interference with the neighborhood. This bed and breakfast does interfere because if it did not he would not be before the Board as a protestant or have hired an attorney. The Board gave the Christophers the benefit of the doubt and granted them a five-year trial period to see how the bed and breakfast would fit into the neighborhood. The Christophers totally disregarded the conditions the Board issued, and if the Christophers did not adhere to the conditions in that five year period who is going to monitor them if they are granted a permanent extension. Mr. Denham stated he has a financial investment in the neighborhood, loves his home, and loves the neighborhood and wants to enjoy the peace and quiet of the area. The special events are a disruption to him and he believes the special events are the main income of the establishment.

Mr. Van De Wiele asked Mr. Denham to tell the Board how many large weddings were held in 2011. Mr. Denham stated that he guessed there were probably ten weddings

held in 2011, but there were other special events held. The special events are the main time the house is active because when there are no special events, the house is mostly dark in the evenings.

Bill Hoag, 585 West Fairview, Tulsa, OK; stated he lives directly across the street from the bed and breakfast. In January Mr. Christopher stated that the bed and breakfast business had dwindled to almost nothing and now he is before the Board saying it is the principal part of the business. Mr. Hoag stated that he has compiled some figures regarding the bed and breakfast using the web site and what Mr. Christopher said in the January 24th meeting. Ms. Christopher has stated that people who rent the Kennedy Mansion for a special event usually stay overnight and that is considered part of the bed and breakfast revenue. But if there is not a wedding being held in the mansion, does this Board think that people of the wedding party are going to stay overnight at the bed and breakfast, especially if the wedding is held at another location? In Mr. Hoag's opinion that is a bad separation of revenue if that is the way they are interpreting their numbers. From the web site the actual occupancy rate from January to February is 16%. Mr. Christopher stated that the minimum rate is \$189.00 per room, yet the web site reflects \$99.00 per room. Mr. Hoag stated he took seasonality into consideration for the months of January and February when he compiled his analysis of the bed and breakfast. Mr. Hoag called the industry of Professional Association of Innkeepers and asked what a well run, four to eight room bed and breakfast occupancy rates is and the answer was a well run operation is 33% and the average room rate is \$125.00. In Mr. Hoag's analysis he used the daily average rate of \$150.00, and based on the bed and breakfasts' own web site, room rates of \$99.00 to \$300.00. Annual revenue using an occupancy rate of 33% would be \$69,000.00. On January 17, 2012 there was a neighborhood reconciliation meeting held which Mr. and Mrs. Christopher attended. This meeting was held in hopes of reaching a compromise on the differences between the Christophers and the neighborhood. A compromise could not be reached because Mr. Christopher kept insisting that he wanted to have six dates each year to hold a special event for 100 or more guests. By using Mr. Christopher's price analysis based on six events in a year for over 100 guests is revenue of approximately \$10,500.00 per event. That would be estimated annual revenue of \$63,000.00 just for six events over 100 guests. The web site advertises a wedding package as the Ultimate Package which is for 80 guests at \$10,000.00 per event. If there were six events booked as the Ultimate Package, in a year that would be approximate annual revenue of \$60,000.00. The web site previously advertised a Special Package for 70 guests, and if there were six of those events held annually that would total approximate annual revenue of \$51,000.00. Just those three packages add up to 18 of the 57 special events held in 2011. Those 18 events add up to approximate annual revenue of \$170,000.00. If the remaining 32 special events ranged in fees of \$500.00 to \$3,000.00, that is another \$16,000.00 to \$96,000.00 annual revenue. Add all those event fees together and there is an annual revenue range of \$190,000.00 to \$270,000.00 special event annual revenue. Compare that to what the industry says he is making about \$60,000.00 to \$70,000.00 gross annual revenue on special events. That is a good business, and all of this based on Mr. Christopher's own comments and his web site before he realized the principal use could become a problem.

Mr. Van De Wiele asked Mr. Hoag how many special events were held in 2011, and Mr. Hoag estimated there to be at least 18 events.

Mr. Hoag stated that the analysis on the square footage seemed to be biased, because it has been said that during special events the bed and breakfast is also used, so why doesn't the analysis include bed and breakfast square footage that is being utilized during the special event.

Sandra Crisp, 708 Country Club Drive, Tulsa, OK; stated she is a resident of the Country Club neighborhood. While listening to Mr. Hoag speak today she used her I-phone to check the web site for the bed and breakfast. There is nothing listed on the web site for \$99.00. The Friday and Saturday night rates range from \$189.00 to \$295.00 depending on if it is a suite or not. Sunday through Thursday, two of the rooms are rented at a range of \$149.00 to \$189.00 per night.

Ms. Stead stated that Ms. Crisp is substantiating the Christophers' point, that the bed and breakfast is the principal use. Ms. Crisp stated she is in favor of the Christophers continuing their bed and breakfast business.

Mr. Henke left the meeting at 2:18 P. M.

Ms. Crisp stated that she has never had a problem with traffic or parked cars to get through the neighborhood, and she drives through the neighborhood to either go to church or to work.

Mr. Henke re-entered the meeting at 2:20 P.M.

Melvin Gilliam, 569 North Country Club Drive, Tulsa, OK; stated he uses Fairview to access the L. L. Tisdale Expressway and has had problems with traffic. Mr. Gilliam stated that he is not in favor of an extension, because the Christophers had five years to comply with the conditions imposed by the Board so why would the Christophers comply in 90 days. If the Kennedy Mansion was just a bed and breakfast business that would be fine, but the special events are a problem for the neighborhood.

Mr. Van De Wiele asked Mr. Gilliam if the 25 space parking lot were installed and the 50 guest limit complied with, would the special events still be an issue. Mr. Hoag stated

the Board set parameters for Mr. Christopher to comply with and he did not do that so let's move on.

Matthew Hinton, 914 North Denver Avenue, Tulsa, OK; stated he lived within a half mile of the subject property. He and his wife moved into the neighborhood approximately five years ago and they have seen the neighborhood grow with vibrancy. To lose something like the bed and breakfast would be terrible so he is in support of allowing the bed and breakfast to continue with conditions. His wife is a marathon runner and she runs through the Fairview neighborhood because it is close and she has never felt unsafe due to traffic. He and his wife like to see the vibrant growth in the neighborhood and do not think this is a major inconvenience.

Celina Burkhart, 752 North Denver Avenue, Tulsa, OK; stated she has lived in the neighborhood for 14 years and she is in support of the Christophers continuing the operation of the bed and breakfast. Ms. Burkhart did say that she wants to see the parking to be removed from the street. Catholic Charities used to be located across the street from her, and their clientele is different from clients of the bed and breakfast, but driving through that type of congestion is not for a neighborhood. It belongs in a business district. She is in support of the bed and breakfast but she is sympathetic toward the neighbors.

Rebuttal:

Bill LaFortune came forward. Mr. Henke asked how much time would be needed to have the parking lot installed. Mr. Christopher stated that he would like to start as soon as possible. Allowing time for weather interruptions approximately 180 days would be a fair time table for completion of the parking lot.

Mr. Van De Wiele asked Mr. LaFortune how the parking lot went from 90 days to 180 days completion. Mr. LaFortune stated instead of coming back in 90 days to make sure Mr. Christopher has complied and progress is being made on the parking, why not set a return in 180 days with the conditions to address all the issues along with the parking lot. The issues that have been raised by protestants have all focused on the parking. Mr. Christopher understands fully that when he returns before the Board in 90 or 180 days and he has not completed what this Board has stipulated, he is not going to have a variance permit, ever.

Ms. Stead stated there seems to be a huge misunderstanding, because her issue is over principal and accessory use. She is unconcerned about Mr. Christopher not completing things that he was asked to do five years ago. It should have been done. If the audience thinks the parking is the big concern they are wrong. She has a zoning code book and an attorney's opinion that says the Board has the authority and the tools to make a decision. When the Board approves a variance or a special exception the Board must state that the variance will not cause substantial detriment to the public nor impair the purpose, spirit or intent of the code or the comprehensive plan. That is Ms. Stead's concern. The parking should have been provided. The number of guests should have been held to 50. It was said that this Board suggests. This Board does not

make suggestions. This Board puts forth conditions and expects them, without anyone's supervision, to be complied with. This Board has been presented with two sets of figures on principal and accessory use and they are miles apart. Ms. Stead asked that no one misinterpret that parking is the only issue the Board has with this facility, because it is not.

Mr. LaFortune stated he two rebuttals to her statement. Number one, the issue of substantial detriment to the neighborhood, which will be addressed by the conditions the Board places on the temporary variance. Number two, regarding the question of principal use. Mr. LaFortune asked Mr. Christopher to review his guest register and compile a list of how many people were bed and breakfast guests, how many beds were sold, how many people were served at the bed and breakfast and that was how the gross revenues for 2011 were calculated. There is no perfect analysis; there are only calculations.

Mr. Van De Wiele asked Mr. LaFortune how the rooms are counted, giving an example of Mr. Van De Wiele holding a special event for his family at the mansion then he and his entire family spend the night at the mansion, thus booking the whole mansion. Are those rooms and dollars counted in the bed and breakfast numbers that were provided, or are they counted in the special events numbers? If the special events guests stayed the night it is counted as a bed and breakfast room rental.

Mr. Van De Wiele asked Mr. LaFortune what is the largest event booked for 2012? Mr. Christopher stated they are guests of 50 or less, most are 20 guests.

Mr. Tidwell asked Mr. Christopher how many events were held in 2011 that had valet parking available. Mr. Christopher stated there were four events that had valet parking, but it was just provided for the physically challenged and the elderly guests.

In closing Mr. LaFortune stated as far as the principal use issue, gross revenues and the mansion are broken down between special events is one factor. The other factor is when the events occur which is six months out of the year with a few interspersed throughout the year. What always occurs throughout the year is the bed and breakfast.

Mr. Christopher came forward to ask the Board to remember that when a package price is presented, it is presented as a package for a reason. A package price pays for the photographer, the wedding cake, the florist, a wedding coordinator, and other vendor that may be used for the event. Another reminder the packages that were offered have been deleted from the web site, thus essentially no longer available. Mr. Christopher stated that he has learned a lot in the last five years and he wants to be a good neighbor.

Ms. Stead asked Mr. Christopher for his opinion if the Board were to decide to discontinue the outdoor events held at the mansion. Mr. Christopher did not understand why the Board would consider that condition because the outdoor events have always

been quiet, they always end by 10:00 P.M., and the sunken garden in the rear is where the events are held, which backs up to the neighbors living on Guthrie.

Comments and Questions:

Ms. Stead stated that she would like to see this facility to continue, prosper and be in business forever. But in weighing the neighbors' comments and the two sets of figures, she cannot approve a permanent variance. Ms. Stead also believes the special events have become the primary business and will be in the future.

Mr. Van De Wiele stated he believes including the bedrooms rented for a special event in the bed and breakfast revenue count is in error, which probably tends to shift the usage to a 50/50 count rather than the one-third/two-thirds count presented. In his experience with bed and breakfast venues, they do have occasional special events, and what he is struggling with is how to monitor the use. He is not in support of anything that will place cars on the street.

Mr. Tidwell stated that after listening to the testimony from both sides the numbers that were heard are not accurate on either side. When a guest attends a special event and spends the night, that guest signs the guest register, making them a bed and breakfast guest. Mr. Tidwell believes the principal use is the bed and breakfast.

Mr. White stated this Board regularly grants reliefs with time limitations basically to see how the granted relief is working within a neighborhood. He understands the financial problems suffered by the Christophers in this time period, but everyone has experienced financial problems. If the conditions of the 2006 Board of Adjustment had been complied with, he does not think these issues would be before the Board today. He concurs with Ms. Stead that parking is not the only issue; there are several other issues involved in this case today. He would really like to see a viable means of monitoring and enforcing the conditions that the Christophers say they will now follow because the burden cannot be placed on the neighbors. Mr. White cannot support the renewal of the variance because he cannot think of a viable way to monitor the issues before the Board.

Mr. Henke stated this is a difficult case for the Board. After hearing today's testimony and reviewing the web site, he cannot tell anyone with any certainty that the primary use is the bed and breakfast. In relation to the variance, the requirements placed on the Board the neighborhood must be protected. When Mr. Henke voted in favor of the bed and breakfast five years ago he was comfortable with the conditions that were placed on the applicant. He understands that the parking is not the only issue before the Board today. Mr. Henke supports the bed and breakfast and if the vote is to extend the variance, then he wants strict requirements placed on the Christophers.

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 **STEAD**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE**, for a period not to extend more than 180 days, the request for a Variance to hold special events at an approved Bed & Breakfast Inn. The following conditions shall apply: no event shall host more than 50 guests. There shall be no, absolutely no on-street parking for a special event during this 180 days. There shall be no amplified music at any outside event. Any parking for events shall be on the Centenary United Methodist Church parking lot. In accordance with the zoning code there shall be no bed and breakfast or special events parking on grass surfaces; it is not allowed. The other provisions of the original of the bed and breakfast Board of Adjustment hearing are unchanged. In the 180 days allowed, a hard surface, meaning asphalt or concrete, parking lot with a minimum of 25 spaces as shown on page 2.22 shall be constructed. In granting this variance the Board must find that 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, with the conditions stated above, should 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:

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

Point of order by Mr. Swiney, is the applicant to come back before the Board of Adjustment for review? Mr. Alberty stated that at the end of the 180 days the applicant will need to file a new application because this motion closes this case at the end of 180 days.

NEW BUSINESS

21380—Claude Neon Federal Signs

Action Requested:

Variance of the requirement that illumination of a sign shall be by constant light to permit an EMC on an existing sign for a school in the RS-3 district (Section 402.B.4); Variance from the 200 foot separation from an R District required for a digital sign (Section 1221.C.2.c). **Location:** 1110 East 45th Place South **(CD 9)**

Presentation:

Gary Larsen, 1225 North Lansing, Tulsa, OK; stated he represents Tulsa Public Schools, specifically Wright Elementary School. Tulsa Public Schools are almost all set in residential zoning surrounded by residential zoning. As it comes time for the school system to replace and upgrade the signs that are 40 to 50 years old they are able to use the current technology, which why there is a request for an electronic message center for the school. The proposed sign is a small sign on an existing structure. There will be no new pole set.

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 a **Variance** of the requirement that illumination of a sign shall be by constant light to permit an EMC on an existing sign for a school in the RS-3 district (Section 402.B.4); **Variance** from the 200 foot separation from an R District required for a digital sign (Section 1221.C.2.c), per plan on page 3.7. The Board makes the further requirement that in as much this sign is not squarely oriented, the Board feels it would shine into the apartment to the north and east of the this building. The Board will require that the sign be shut off at 10:00 P.M. and remain off until 6:00 A.M. the following day. It shall contain no flashing or highly animated subject material. In approving this variance the Board has found that this school message board is beneficial to the community and 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 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:

The East 995 feet of the South 474 feet of Annie May Grant Track "B" and the East 995 feet Annie May Grant Track "C" of L. J. F. Rooney Survey of Partition of Lands of Annie May Grant (nee Adbo) & Harry N. Abdo in Sec. 25 T. 19 N. R. 12 E & Sec. 30 T. 19 N. R. 13 E., Tulsa, County, Oklahoma, according to the recorded plat thereof, less a tract of ground in the Southeast corner of the Annie May Grant "C" Tract, which is a part of the N/2 of NE/4 of SE/4 of 25-19-12, specifically described as:

Beginning at a point in center Section line on the east side of said section 25 at the Southeast corner of Annie May Grant "C" Tract according to the recorded plat

and running thence North in the center of said Section line along the east boundary of said Section 25 a distance of 160 feet, thence due west and parallel with the south boundary line of said Section 25, a distance of 170 feet, thence South and parallel with the east boundary line of said Section 25, a distance of 160 feet, thence East along the south boundary line of said Annie May Grant "C" Tract a distance of 170 feet to the point of beginning, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21390—Bill Schiffmacher

Action Requested:

Variance of the required front yard setback from 30 feet to 22 feet (Section 403.A, Table 3). **Location:** 3306 South Zunis Place East (CD 9)

Presentation:

Bill Schiffmacher, 3306 South Zunis Place, Tulsa, OK; no presentation was made but Mr. Schiffmacher stated he would answer any questions.

Mr. White asked Mr. Schiffmacher if any of his neighbors had expressed any concerns regarding his request, and Mr. Schiffmacher stated that no one contacted him.

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 required front yard setback from 30 feet to 22 feet (Section 403.A, Table 3). This will be for an extension of the garage to the existing dwelling, finding that this is on the inside of a curve which would reduce the problems of any traffic site obstruction. It is not going to be any closer to the side yard than the existing house itself, and will be per conceptual plan on page 4.7. Finding that 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:

LT 2 BLK 6, OAKNOLL, OAKNOLL EXT, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

Mr. Tidwell left the meeting at 3:24 P.M.

21391—Craig and Monica Smedley

Action Requested:

Variance to exceed the allowed detached accessory building floor area in the RS-3 zone to allow an 1,800 square foot detached accessory building (Section 402.B.1.d). **Location:** 518 North 39th Avenue West **(CD 1)**

Mr. Tidwell re-entered the meeting at 3:27 P.M.

Presentation:

Craig and Monica Smedley, 518 North 39th West Avenue, Tulsa, OK; Mr. Smedley is before the Board today to request permission to build a storage building larger than what the code will allow.

Ms. Stead stated there must be a concrete or asphalt surface from the breezeway to the proposed storage building for access to the building. Mr. Smedley stated the building would be on a concrete slab.

Mr. Henke asked Mr. Smedley what he planned to store in the building. Mr. Smedley stated he would be storing his trailer, concrete mixer, the tools he uses for remodeling, and remnants left over from the rental house remodel jobs he has done.

Ms. Stead asked Mr. Smedley if he was going to use the breezeway as an access point to the proposed storage building. Mr. Smedley stated that he was planning on accessing the building from his side yard on the north side because there is a gate in the fence on the side of his house. Ms. Stead stated that there is no concrete drive on the side of the house and a concrete or asphalt surface is required to be able to access the proposed storage building. Mr. Smedley then said he could access the storage building from the breezeway if necessary. Ms. Stead stated even then there would be a hard driving surface required from the breezeway to the storage building. Mr. Smedley asked if a driving surface was necessary just for a storage building. Mr. Van De Wiele stated that if the building was going to be accessed with a vehicle, a hard driving surface is necessary because driving on the grass is prohibited.

Mr. Alberty stated that when he heard what was going to be stored in the building, those items are not for residential use and that is not typically allowed. Ms. Stead agreed,

she said it was a business. Mr. Alberty stated the Board can see it differently but that is typically one of the questions that is asked of the applicant, "What is to be stored in the building?". Anything other than yard equipment, Mr. Smedley is in a commercial business and that would be illegal use. Mr. Henke asked Mr. Alberty if it was his recommendation the case be continued. Mr. Alberty did not think the case could be heard. If the permit office had known what items were going to be housed in the building they would have cautioned Mr. Smedley that it was not a permitted usage in a residential area.

Ms. Back asked Mr. Smedley if his job were his rent houses or is it for tools for rent houses that are not a primary income. Mr. Smedley stated the items are things that are left over from a remodel of a rent house. It is mostly items that can be re-used, i.e., a vanity.

Mr. Alberty stated that concrete mixers and trailers are not residential items. Mr. Smedley stated that what he wanted to accomplish was to build a storage building for the items currently in his garage, and once the items were out of the garage he could park his car in his garage.

Mr. Van De Wiele suggested this case be continued allowing time for the Smedleys to speak to the INCOG staff to determine the proper use, and discuss the asphalt issue. Mr. Alberty stated that it is not going to be INCOG's decision it is going to be the decision of the Plans Review at the City. Mr. Alberty suggested Mr. Smedley go back to the City and clarify his use of the proposed storage building.

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 **CONTINUE** the request for a **Variance** to exceed the allowed detached accessory building floor area in the RS-3 zone to allow an 1,800 square foot detached accessory building (Section 402.B.1.d) to the meeting on March 13, 2012 so Mr. Smedley can clarify prospective use of the proposed storage building with Permit Department; for the following property:

**BEG NEC LT 1 BLK 1 HIGHFILL TH W306.6 N121.8 E306.4 S121.8 POB SEC 4 19
12, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

21393—George Hagman

Action Requested:

Variance of the permitted height of a ground sign abutting a designated freeway from 50 feet to 60 feet (Section 1221.E.1). **Location:** 6550 East Skelly Drive (CD 5)

Presentation:

Shawn Whistler, Whistler Sign Company, 11063-D South Memorial, PMB 523, Tulsa, OK; no presentation was made but Mr. Whistler was available for any questions.

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 a Variance of the permitted height of a ground sign abutting a designated freeway from 50 feet to 60 feet (Section 1221.E.1). The approximate sign location is shown on page 7.7 and conceptual plan on page 7.6. The existing sign is to be removed. The Board has found that there is vertical foot grade change from I-44 to the surface of the proposed sign location, it is approximately 15'-0" below the base of the existing wall. These conditions are extraordinary and exceptional, which are peculiar to the land, structure or sign involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions 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:

**LTS 1 & 2 BLK 1 & PRT NE SW BEG NEC LT 1 BLK 1 SPACE CENTER IND DIST
ADDN TH S233.13 W73.70 SELY CRV RT 225.11 N439.51 W3.37 POB SEC 23 19 13
.119 AC, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

21394—Tim Terral/Tulsa Engineering & Planning

Action Requested:

Variance of the Bulk and Area 150 foot arterial road frontage requirements in the CS District to permit a lot-split (Section 703, Table 2). **Location:** 6740 South Lewis Avenue East (CD 2)

Presentation:

Tim Terral, Tulsa Engineering and Planning, 6737 South 85th East Avenue, Tulsa, OK; stated this tract has been in existence for approximately 40 years. The request for a variance was triggered because a lot-split and lot combination has been applied for on the west 29'-0" of this tract, and will be going before TMAPC next Wednesday. The west 29'-0" of this lot is currently being leased by a car wash and they would like to purchase this 29'-0" piece of land.

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 requirements in the CS District to permit a lot split (Section 703, Table 2). Finding that this property has been at the 110'-0" width for approximately 40 years and the lot-split is for only the rear 29'-0" of that particular lot. This is primarily for the purpose of the allowing the car wash to have the drive access being their property. The approval is subject to the lot combination being approved by The Metropolitan Area Planning Commission. Finding that 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:

**N110 E200 N/2 SE SE SEC 6 18 13 .5AC, LEWIS VILLAGE, SOUTHERN CROSS
ADDN B1, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

OTHER BUSINESS

None.

NEW BUSINESS

None.

BOARD MEMBER COMMENTS

None.

There being no further business, the meeting adjourned at 3:42 p.m.

Date approved: _____

3/13/12



Chair