

BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1074
Tuesday, July 10, 2012, 1:00 p.m.
Tulsa City Council Chambers
One Technology Center
175 East 2nd Street

**MEMBERS
PRESENT**

Henke, Chair
Tidwell, Secretary
Van De Wiele
White, Vice Chair

MEMBERS ABSENT

Stead

STAFF PRESENT

Back
Sparger

**OTHERS
PRESENT**

Swiney, Legal
VanValkenburgh,
Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Wednesday, July 5, 2012, at 10:30 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.

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

MINUTES

On **MOTION** of **TIDWELL**, the Board voted 4-0-0 (Henke, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Stead absent) to **APPROVE** the **Minutes** of the June 26, 2012 Board of Adjustment meeting (No. 1073).

Mr. Henke explained to the applicants that there were only four board members present at this meeting due to the resignation of one member, and there is new board member that will appear before Council before the next Board of Adjustment meeting. If an applicant would like to postpone his or her hearing until the next meeting he or she could do so. If the applicant wanted to proceed with the hearing today it would be necessary for him to receive an affirmative vote from three board members to constitute a majority. Mr. Henke asked the applicants if they understood and asked the applicants if they would like to continue their case and if so to please raise their hand and the

Board will entertain any continuance request. No one raised their hand, the Board of Adjustment proceeded with today's hearing.

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NEW BUSINESS

21448—Sisemore, Weisz & Associates, Inc.

Action Requested:

Special Exception to allow Youth Sanctuary and multi-purpose youth center in an OL district (Section 601); Variance of the one-story building height in an OL district to allow a 2-story youth center building with a maximum building height of 35 feet (Section 603); Variance to waive the screening fence requirement along the east, west, and south property lines on subject site (Section 1303.E); Special Exception to allow use of up to 30 parking stalls on an off-site lot of record (Section 1301.D); Special Exception to allow use of up to 30 parking stalls in an RS-3 district (principle church parking lot) (Section 401); Special Exception to allow a 6 foot (cyclone) fence in a front yard for the easterly 220 feet of the site (Section 210.B). **LOCATION:** 1800 West 51st Street **(CD 2)**

Ms. Back stated this case needs to request a continuance due to an incorrect date on one of the public postings. The newspaper posting was correct and the mailings were correct. However, the sign that was posted on the site was posted with an incorrect hearing date. The new sign will be posted on the site today. Staff requests the Board's permission to continue this case to the July 24, 2012 hearing.

Presentation:

A continuance was requested due to incorrect date on post sign on the site; no presentation was made.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Stead absent) to **CONTINUE** the request for a Special Exception to allow Youth Sanctuary and multi-purpose youth center in an OL district (Section 601); Variance of the one-story building height in an OL district to allow

a 2-story youth center building with a maximum building height of 35 feet (Section 603); Variance to waive the screening fence requirement along the east, west, and south property lines on subject site (Section 1303.E); Special Exception to allow use of up to 30 parking stalls on an off-site lot of record (Section 1301.D); Special Exception to allow use of up to 30 parking stalls in an RS-3 district (principle church parking lot) (Section 401); Special Exception to allow a 6 foot (cyclone) fence in a front yard for the easterly 220 feet of the site (Section 210.B) to the Board of Adjustment meeting on July 24, 2012; for the following property:

**LT 1 BLK 1, CARBONDALE ASSEMBLY OF GOD CHURCH PRT RSB RES A HILL
HAVEN ADD, HILL HAVEN ADDN, HILL HAVEN SECOND ADDN, MAY TERRACE,
CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

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UNFINISHED BUSINESS

21435—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); Variance of the requirement that EMC sign shall be located within 20 feet of the driving surface of a street (Section 1221.C.2.b). **LOCATION:** 12121 East 21st Street **(CD 6)**

Ms. Back stated the variance requests in this case have been advertised. Staff has determined that Section 1221 is not applicable in a residential district. A refund of \$200.00 has been requested by the applicant.

Presentation:

Gary Larsen, 1225 North Lansing, Tulsa, OK; stated he is representing Cooper Elementary School. All of Tulsa Public Schools are embedded in residential zoning, and this school wants to upgrade their messaging capabilities to the new digital technology.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Stead 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). Finding that the sign will be beneficial for transmitting information, i.e., safety issues, the weather conditions, school closings, school events, etc. and it has been the norm for schools around Tulsa for some time. This approval is with the conditions that the maximum hours of operation of the sign will be from 7:00 A.M. to 10:00 P.M. There will be no blinking, no flashing, no animation, no rolling and scrolling will be right to left only. This approval will be per conceptual plan on pages 2.8 and 2.9. This will be utilizing the existing sign and conceptual plans for size standards. 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:

W/2 SW SE LESS S50 FOR ST SEC 8 19 14, STACEY LYNN FOURTH, SHANNON PARK 4TH ADDN - WAINRIGHT SECTION, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

NEW BUSINESS

21435—Claude Neon Federal Signs

Action Requested:

Request for a refund of \$200.00 for the **Variance** from the 200 foot separation from an R district required for a digital sign (Section 1221.C.2.c); **Variance** of the requirement that EMC sign shall be located within 20 feet of the driving surface of a street (Section 1221.C.2.b). **LOCATION:** 12121 East 21st Street **(CD 6)**

Presentation:

No presentation was made.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Stead absent) to **APPROVE** the Request for a refund of \$200.00 for the Variance from the 200 foot separation from an R district required for a digital sign (Section 1221.C.2.c); Variance of the requirement that EMC sign shall be located within 20 feet of the driving surface of a street (Section 1221.C.2.b); finding that Section 1221 is not applicable in a residential district; for the following property:

W/2 SW SE LESS S50 FOR ST SEC 8 19 14, STACEY LYNN FOURTH, SHANNON PARK 4TH ADDN - WAINRIGHT SECTION, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21445—Claude Neon Federal Signs

Action Requested:

Variance of the requirement that illumination of a sign shall be by constant light to permit a digital sign on an existing sign for a school in the RS-3 district (Section 402.B.4.a); Variance of the maximum display surface area for a bulletin board sign from 32 square feet to 41 square feet in an RS-3 district (Section 402.B.4.a); Variance from the 200 foot separation from an R District required for a digital sign (Section 1221.C.2.c); Variance of the requirement that no digital sign shall be located within 20 feet of the driving surface of a street (Section 1221.C.2.b).

LOCATION: 1519 South Quincy Avenue (CD 4)

Ms. Back stated the variance requests in this case have been advertised. Staff has determined that Section 1221 is not applicable in a residential district. A refund of \$200.00 has been requested by the applicant.

Presentation:

Ed Horkay, Claude Neon Federal Signs, 1225 North Lansing, Tulsa, OK; stated he represents Marquette School and Christ the King Church. This variance request is for the client's sign on Quincy Avenue. The Marquette School and Christ the King property is surrounded by CS and OL zoning properties. The sign is 299 feet away from the closest residential area. The sign is also on a four-lane residential street as opposed to the typical two-lane residential street. The client is requesting a digital sign with a name on top of the sign which is in excess of the 32 square feet. The identity sign portion is 16 square feet, the message center is 21.55 square feet and the spacer in between is two square feet.

Mr. White stated to staff that he did not see the reference to EMC in the case. Mr. Henke requested that Ms. Back start including that in the case report. Ms. Back stated that in the definitions, there are different definitions for digital and EMC. The sign digital is different than the electronic message center (EMC) and in speaking with the applicant he specifically wanted digital using the City's interpretation as the guideline. That is why the EMC is not referred to in this case.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 4-0-0 (Henke, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Stead absent) to **APPROVE** the request for a **Variance** of the requirement that illumination of a sign shall be by constant light to permit a digital sign on an existing sign for a school in the RS-3 district (Section 402.B.4.a); **Variance** of the maximum display surface area for a bulletin board sign from 32 square feet to 41 square feet in an RS-3 district (Section 402.B.4.a). Finding that the school and church occupy the premises and need an updated sign for delivery of information. This approval is subject to the conditions that the sign will be operated during the hours no longer than 7:00 A.M. to 10:00 P.M. There will be no blinking, no twinkling, no flashing, no animation, no rolling and scrolling will only be from right to left. This is subject to the conceptual plan on pages 3.8 and 3.9, utilizing the existing sign and conceptual plans for size standards. 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 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:

LTS 1 THRU 16 BLK 6, ORCUTT ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21445—Claude Neon Federal Signs

Action Requested:

Request for a refund of \$200.00 for the **Variance** from the 200 foot separation from an R District required for a digital sign (Section 1221.C.2.c); **Variance** of the requirement that no digital sign shall be located within 20 feet of the driving surface of a street (Section 1221.C.2.b). **LOCATION:** 1519 South Quincy Avenue **(CD 4)**

Presentation:

No presentation was made.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 4-0-0 (Henke, Tidwell, Van De Wiele, White “aye”; no “nays”; no “abstentions”; Stead absent) to **APPROVE** the Request for a refund of \$200.00 for the Variance from the 200 foot separation from an R District required for a digital sign (Section 1221.C.2.c); Variance of the requirement that no digital sign shall be located within 20 feet of the driving surface of a street (Section 1221.C.2.b); finding that Section 1221 is not applicable in a residential district; for the following property:

LTS 1 THRU 16 BLK 6, ORCUTT ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

17117-A—Jack Bubenik – City of Tulsa

Action Requested:

Modification to previously approved site plan (BOA-17117) to permit demolition of dilapidated structures and construction of new facilities (Clark Park). **LOCATION:** 11440 East Admiral Place **(CD 3)**

Presentation:

Gary Schellhorn, City of Tulsa, Engineering Services, 2317 South Jackson, Tulsa, OK; stated that he is before the Board of Adjustment to request a modification to a previously approved site. The work will consist of the demolition of an existing dilapidated theatre and new construction of a shelter, sidewalks, benches, and picnic tables.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

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

Modification to previously approved site plan (BOA-17117) to permit demolition of dilapidated structures and construction of new facilities in Clark Park. Finding that the request is necessary and reasonable to ensure that the proposed amenities are compatible and not injurious to the surrounding residential area. This is subject to the conceptual plan on pages 4.6 and 4.7 for funded and unfunded items with no further Board action required. It also meets the previously granted special exception, subsequent approved modifications and meets the current zoning requirements; for the following property:

BEG 990E NWC LT 5 TH S400 E300 N400 W300 POB SEC 5 19 14 2.75 ACS, BG 532.36 NE OF NEC LT 11 BK 1 W VILL TH NE DUE N 375 E 585 S 198 TH CVE RT 96.8 SW 50 CVE LT 62.3 W 495.92 TB 5-19-14, RADISON ACRES, WESTERN VILLAGE THIRD ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

19826-A—Jack Bubenik – City of Tulsa

Action Requested:

Modification to previously approved site plan (BOA-19826) to permit demolition of dilapidated structures and construction of new facilities (Springdale Park).

LOCATION: 2223 East Pine Street (CD 1)

Presentation:

Gary Schellhorn, City of Tulsa, Engineering Services, 2317 South Jackson, Tulsa, OK; no presentation was made.

Interested Parties:

Lizeth Bustos, 11449 East 4th Place, Tulsa, OK; stated she is before the Board on behalf of her father. She stated that her father is not against the park but he wants a fair settlement offered to him for his property, because he received a notice saying that his house was going to be demolished.

Mr. Henke told Ms. Bustos that he believes there is a misunderstanding. Mr. Henke asked Mr. Schellhorn if the proposed plans were all on park property, and he answered affirmatively.

Mr. Van De Wiele informed Ms. Bustos that the structures that were to be demolished are old structures in the park only, not her father's house. Ms. Bustos said that was all her father wanted to know, and she thanked the Board.

Comments and Questions:

None.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 4-0-0 (Henke, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Stead absent) to **APPROVE** the request for a

Modification to previously approved site plan (BOA-19826) to permit demolition of dilapidated structures and construction of new facilities in Springdale Park. Finding that the modification approving the conceptual plans submitted for funded and unfunded items conceptually approved, therefore, no further Board of Adjustment action is required. Finding that the proposed improvements to be compatible with the neighborhood and previously approved special exception; for the following property:

LTS 14 & 15, KINLOCH PARK, PROSPECT PLACE, PROSPECT PLACE ADDN SUB B3, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

17020-A—Jack Bubenik – City of Tulsa

Action Requested:

Modification to previously approved site plan (BOA-17020) to permit demolition of dilapidated structures and construction of new facilities (Manion Park). **LOCATION:** 3003 East 56th Street (CD 9)

Presentation:

Gary Schellhorn, City of Tulsa, Engineering Services, 2317 South Jackson, Tulsa, OK; stated this request is similar to the previous two requests. The new construction proposed for this park will include sidewalks, water playground, water fountain, benches, and other accessory amenities for the park.

Interested Parties:

Reuben Davis, 2913 East 56th Place, Tulsa, OK; stated this location is directly across the street from the structure that has been identified as the dilapidated building. He is very interested in the growth of the neighborhood and attracting young families to move into the neighborhood. Several people in the neighborhood have been interested in this project, particularly in the offer to demolish the facilities and the construction of a splash pad waterpark. The structure proposed for demolition, he believes, is in good condition. He has had discussions with Mr. Bubenik and Mr. Schellhorn. They even met him at the park and opened the structure for Mr. Davis to inspect. Present at this meeting was Mr. Salisbury, who is a maintenance person, and he said the facility offers no maintenance challenges because it has not been used for quite awhile. Mr. Davis's inspection revealed a building that had not had a lot of care but was structurally sound. He asked the Parks Department for information, and they furnished him with a report that stated the repair cost would be \$916,000.00. Several facilities could be built with the park land for that amount of money. Ms. Lucy Dolman, with the City, told him that the demolishing cost was estimated to be \$630,595.00, which seems to excessive for destruction. Ms. Lucy Dolman also told him that the funds are not available and donations will be sought. Mr. Davis thinks that before the Board of Adjustment approves this request he believes it would be prudent that the citizens of Tulsa know the money is in an account to accomplish the proposed project. The facilities the City has proposed to destroy is a swimming pool and a recreation center. Mr. Davis has been told that cities are trying to get away from static structures and get to more self-directed

type of facilities nationwide. One of the reasons he chose this neighborhood to live in is because of these facilities, and he believes under proper management they could be used for the benefit of the neighborhood and the surrounding neighborhoods. Mr. Davis would request the approval of this request be delayed until the funds are available to achieve the proposed plans.

Mr. Van De Wiele asked Mr. Davis if he knew how long it had been since the pool or facility had been utilized. Mr. Davis stated that it has been approximately three years since the pool has operated.

Rebuttal:

Mr. Schellhorn came forward and stated the demolition costs that Mr. Davis referred to is a system wide estimate for nine different centers and amenities. The demolition cost for this facility would be approximately \$63,000.00 and removal of the structure and swimming pool. That figure also includes the fill-in and compaction of the swimming pool bringing the area back to a good sodded condition. Those figures are based on current construction costs. The City has had conversations with the neighborhood association and the proposal was approved by the neighborhood association with the majority of the neighborhood association in attendance at a meeting in regards to this proposal.

Mr. Van De Wiele asked Mr. Schellhorn if the \$916,000.00 repair cost quoted by Mr. Davis was a system wide figure. Mr. Schellhorn stated that it was not, it is strictly for this building in this park. This building was built in the 1970s and prior to the Americans Disability Act, which now requires so much more area and access throughout the building, this building requires a major remodel. The restrooms in this building are not currently accessible for the disabled as well as many of the rooms in this building. There are also issues with the mechanical system because there is a central return flow area that is not allowed by code any longer, so a full remodel of the mechanical system throughout the building would be required. These are just a few of the items the City must deal with to be able to operate a facility under the current codes and the current ADA requirements. It would be cost prohibitive to retrofit this building.

Mr. Henke asked Mr. Schellhorn what the anticipated timeline was for this work, if this request were to be delayed as Mr. Davis suggested. Mr. Schellhorn stated the City is currently completing drawings on a playground based on the approval from a neighborhood association in January or February 2012. The City is in hopes to have that park completed and in operation in time for the swim season of 2013.

Mr. White asked Mr. Schellhorn to comment on the funding issue. Mr. Schellhorn stated that there is sufficient funding in place to build a water playground for this proposed site at this time and the amenities that belong with the water playground, i.e., the sidewalks. To have sufficient funding in place to completely remodel this park it will take another funding sales tax initiative or private donations to achieve the end goal.

Mr. Davis came forward and stated that the neighborhood association approval that was given in January or February was tentative approval not unanimous. That vote should not be controlling today, what should be controlling is what is in the best interest of the citizens of this area.

Mr. Van De Wiele asked Mr. Davis if he were given a choice of keeping the deteriorating unopened facility with a deteriorating unopened pool or what is proposed to be built and opened for the next swim season, which would he choose and is better for the neighborhood. Mr. Davis stated obviously, the building as Mr. Van De Wiele described it would not be good for the neighborhood. The splash pad would be a benefit. But an area, such as this one, without restrooms presents a problem.

Mr. Schellhorn came forward and stated that currently there are no restrooms available to the park because the building has been closed, and has been for several years. Restrooms pose a lot of security issues. It is the parks policy not to provide restrooms except for destination type parks, which this is not. It is the City's opinion, that in the best interest of the park and of the neighborhood that removal of the building and the installation of the water playground move forward.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Stead absent) to **APPROVE** the request for a **Modification** to previously approved site plan (BOA-17020) to permit demolition of dilapidated structures and construction of new facilities in Manion Park. Finding that the modification approving the conceptual plans submitted for funded and unfunded items conceptually approved, therefore, no further Board of Adjustment action is required. Finding that the proposed improvements to be compatible with the neighborhood and previously approved special exception, subsequent modification, and meets the current zoning requirements; for the following property:

N 984.5 OF E 210 W 1/2 SW NE & E 1/2 SW NE SEC 32-19-13, BRITTANY SQUARE, FAIRWAY ESTATES THIRD ADDN, HARVARD PARK SOUTH AMD, VILLA GROVE GARDENS AMD, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21446—A-MAX Sign Company

Action Requested:

Variance of allowed sign height from 25 feet to 35 feet in an IL District (Section 1221.E.1); **Variance** of 60 foot setback to 50 foot setback in an IL District (Section 1221.E.1). **LOCATION:** 10205 East 61st Street South **(CD 7)**

Presentation:

Daryl Woodard, 6311 East 105th Street, Tulsa, OK; stated the existing sign is deteriorating and this proposal is to enhance the look of the sign. There has been a lot of time invested in this property by cleaning it up. The existing sign would not be replaced, it would simply be refaced.

Mr. Van De Wiele asked Mr. Woodard about the notation on the site plan on page 7.8, in the Board's agenda packet, referring to a future message center. Mr. Woodard stated that he was not requesting approval for the message center because he decided not to have one on the sign.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 4-0-0 (Henke, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Stead absent) to **APPROVE** the request for a **Variance** of allowed sign height from 25 feet to 35 feet in an IL District (Section 1221.E.1); **Variance** of 60 foot setback to 50 foot setback in an IL District (Section 1221.E.1) to permit the refacing and updating of an existing sign; subject to conceptual plan on page 7.8 with the caveat that the Board is not approving an electronic message center. The Board has found that the existing sign is in need of repair and the sign was most likely constructed prior to the City's code, and the location now requires the request for these two variances. 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 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 1 BLK 1, GROGG` S LANDING, MINGO VALLEY TRADE CENTER, 100 EAST INDUSTRIAL PARK AMD RESUB 100 EAST INDUSTRIAL PARK, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21447—Donna Danner

Action Requested:

Variance from one-story height restriction to two-story and from the height requirement of 18 feet to 22 feet for a detached accessory building in the RS-4 District (Section 210.B.5.a). **LOCATION:** 1152 North Denver Avenue **(CD 1)**

Presentation:

Donna Danner, 1152 North Denver Avenue, Tulsa, OK; stated her house is a historical house located in the Brady Heights District. The house has a detached garage that was built in 1917 and it is in a dilapidated state. She would like to rebuild the structure, imitating as it was before.

Mr. Van De Wiele asked Ms. Danner if she had plans for using the upstairs portion of the garage as rental property. Ms. Danner stated that she was not; her plans are to use it as a garage with storage.

Mr. White asked Ms. Danner if her home was on the historical register. Ms. Danner stated that her home is on the National Historical Register.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Stead absent) to **APPROVE** the request for a **Variance** from one-story height restriction to two-story and from the height requirement of 18 feet to 22 feet for a detached accessory building in the RS-4 District (Section 210.B.5.a). Finding that this existing detached garage built in 1917 is in a delapidated state of repair and this is on property that has a house on the historical register. This is subject to conceptual plan on pages 8.8 and 8.9. 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:

LOT 6 & 7 AND RESERVE BLK 4, THE POWDER AND POMEROY ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

18310-A—Ollie Harris – City of Tulsa Police Department

Action Requested:

Modification to a previously approved site plan (BOA-18310) to allow for the addition of a 30 foot x 60 foot enclosed pole barn for storage of vehicles and training equipment. **LOCATION:** 10926 East Cameron Street North **(CD 3)**

Presentation:

Oliie Harris, Safety & Equipment Manager, City of Tulsa Police Department, 5009 East 15th Street, Tulsa, OK; stated the Police Department is requesting to build a storage facility on City property located in Holiday Park. The site has been used since 1987 for a training facility. After the Mingo Creek flood the site was taken over by Stormwater Management and they were going to convert the property into a park, but the Police Department was able to retain it for their safety center. There is a permanent building on the property in the northeast corner, and a training facility structure south of that is for Public Works. The proposed pole barn would be placed south of the Public Works training facility. Currently the Police Department stores their training material in an enclosed trailer which has been vandalized several times, and a Suburban that was stored on the site was stolen. For these reasons the Police Department requests to have a pole barn erected giving them a more secure facility for their equipment.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 4-0-0 (Henke, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Stead absent) to **APPROVE** the request for a **Modification** to a previously approved site plan (BOA-18310) to allow for the addition of a 30 foot x 60 foot enclosed pole barn for storage of vehicles and training equipment, subject to conceptual site plan on page 9.6. Finding that the modification will be in the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; for the following property:

PRT BLK 1 BEG 414.27W & 365.45SWLY ORIG NEC BLK 1 TH SWLY500.96 SWLY703.01 SW310.99 SWLY657.30 E1745.80 N1069.46 POB,HOLIDAY PARK, SANDERS-ENGLAND FIRST ADDN AMD RESUB PRT B1 HOLIDAY PARK, SPRING GROVE SUB, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

19536-A—Acura Neon. Inc.

Action Requested:

Modification to previously approved site plan (BOA-19536) to reface existing wall and monument signs. **LOCATION:** 3720 East 31st Street **(CD 9)**

Presentation:

Peter Janzen, Acura Neon, 1801 North Willow Avenue, Broken Arrow, OK; stated he represents the TTCU Credit Union. The credit union branch is located near 31st and Harvard Avenue, and they are going to refurbish their sign with a slight change to the copy. The copy will change from Tulsa Teachers Credit Union to The Credit Union, and

that will be done at all their locations. There is a wall sign and a monument sign. The wall sign would have a few of the letters taken out with the remaining reconfigured. The monument sign would be taken down, taken to the Acura shop, repainted, and reconfigure the letters. There would be no changes in the size, and there would no digital on the signs. These signs are located in a PUD and were previously approved per plan thus the request for a modification.

Interested Parties:

Chad Smith, City of Tulsa, 175 East 2nd Street, Tulsa, OK; stated with this PUD being located in a PUD the conceptual plan should be taken before TMAPC as opposed to the Board of Adjustment. If the Board renders a decision on the sign it would still not relieve Acura Neon from appearing before TMAPC.

Mr. Jansen stepped forward and stated that it was his understanding that Acura was not required to appear before TMAPC per Chris Sansoneo INCOG. Mr. Sansone told Mr. Janzen that his appearance before the Board was all that was needed to get the sign permitted.

Ms. Back stated that it is staff's understanding that instead of making the applicant appear before both committees, that Acura could request a modification to the site plan through the Board of Adjustment or request a minor amendment through the PUD. Mr. Sansone directed staff to go through the Board of Adjustment requesting the modification to the site plan and have the Board approve it per conceptual plan. With the approval per conceptual plan the applicant would not need to appear before TMAPC as well.

Mr. Janzen read an e-mail he had received from Mr. Sansone. In the e-mail Mr. Sansone stated that it was his policy not to require an applicant to go before the BOA for relief in a PUD to also complete a minor amendment with the TMAPC. He brought his proposed plan to Carolyn Back, and after checking and studying everything it was decided that this was the best procedure.

Ms. Back stated that it is her understanding that Chris Sansone did this quite regularly, either appear before the Board of Adjustment or appear before TMAPC.

Mr. Van De Wiele stated applicants usually appear before the Board and TMAPC when signs are increasing the amount of signage, the number of signs, and/or the size of signs. This is simply changing the text of a sign.

Ms. VanValkenburgh stated she understood that a change in a sign would require an applicant to also appear before TMAPC.

Ms. Back stated this request is not a change in a site plan but simply a change in the text of signs that were previously approved. That is the condition being looked at today. The site plan is not changing. One sign is just getting repainted with new wording, and

the other sign is just a matter of rearranging the letters which is decreasing the size of the sign.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Stead absent) to **APPROVE** the request for a **Modification** to previously approved site plan (BOA-19536) to reface existing wall and monument signs, subject to conceptual site plan on pages 11.8, 11.9, and 11.10. Finding that the conditions necessary and reasonably related to the request that to ensure the proposed facility is compatible with and is noninjurious to the surrounding residential areas. The previously granted variances to the bulk and area requirements and zoning requirements are per code; for the following property:

E/2 LT 3 LESS N20 THEREOF, W/2 LT 3 LESS N20 THEREOF, E/2 LT 4 LESS N20 THEREOF, N75 S150 W1/2 LT 4, S75 W1/2 LT 4, N150 W/2 LT 4 LESS BEG NWC TH E150 S20 W120 TH ON CRV LF 47.12 N50 POB, ALBERT PIKE SUB, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21449—Morad El-Raheb

Action Requested:

Variance of the off street parking requirement from 18 spaces to 11 spaces (Section 1212.D). **LOCATION:** 2446 East 11th Street **(CD 4)**

Mr. Henke left the meeting at 2:12 P.M.

Presentation:

Morad El-Raheb, 5118 East 80th Street, Tulsa, OK; stated he would like to convert this gas station that was built in 1928 to a coffee shop. There is an ONG gas meter on the property that cannot be moved, and that is the reason only 11 parking spaces can be provided for the proposed coffee shop.

Mr. Henke re-entered the meeting at 2:14 P.M.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 4-0-0 (Henke, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Stead absent) to **APPROVE** the request for a **Variance** of the off street parking requirement from 18 spaces to 11 spaces (Section 1212.D), subject to conceptual site plan on page 12.7. Finding that the subject property building was constructed and platted well before the current zoning code and the area available for parking will not allow the full amount required by code. 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:

LT 1 LESS BEG NWC TH E20 S15 W20 N15 POB BLK 1, BOSWELL'S ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21452—Jack Bubenik – City of Tulsa

Action Requested:

Special Exception to permit a public park (Use Unit 5) to be located in an RS-2/CS/AG (PUD-528) zoned district (Cousins Park). **LOCATION:** 4514 East 121st Street South (CD 8)

Presentation:

Gary Schellhorn, City of Tulsa, Engineering Services, 2317 South Jackson, Tulsa, OK; stated the City is seeking permission to have a public park on City owned property that is located in a RS-2/CS/AG (PED-528) zoned district. The park will have native plantings, trees, flowers, a trail, a park area and a future pioneer farmstead for interactive educational opportunities. The park will be operated and staffed by City staff, and completed in four phases.

Mr. White asked Mr. Schellhorn what happened to the bridge. Mr. Schellhorn stated that City is intentionally staying off the piece of property with the proposed bridge.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Stead absent) to **APPROVE** the request for a Special Exception to permit a public park (Use Unit 5) to be located in an RS-2/CS/AG zoned district (Cousins Park). This approval is subject to conceptual plan on page 13.8 for the funded items and unfunded items with no further Board of Adjustment approval; for the following property:

THE NORTH 660.0' OF THE EAST 660.0' OF GOVERNMENT LOT 1, OF SECTION 4, TOWNSHIP 17 NORTH, RANGE 13 EAST OF THE INDIAN BASE MERIDIAN, TULSA COUNTY, ACCORDING TO THE U.S. GOVERNMENT SURVEY THEREOF

AND

GOVERNMENT LOT 1, LESS AND EXCEPT THE NORTH 660.0' OF THE EAST 660.0' THEREOF AND ALL OF GOVERNMENT LOTS 2 AND 6 IN SECTION 4, TOWNSHIP 17 NORTH, RANGE 13, EAST OF THE INDIAN BASE MERIDIAN, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE U.S. GOVERNMENT SURVEY THEREOF, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

OTHER BUSINESS

21418—Andrew Shank

Action Requested:

Request for a final determination in BOA-21418 and/or Motion to reconsider BOA-21418, an appeal of the determination of an administrative official concerning a business sign (Section 1605). **LOCATION:** 4703 South 103rd East Avenue **(CD 7)**

Mr. Tidwell recused himself and left the meeting at 2:25 P.M.

Presentation:

Andrew Shank, 2727 East 21st Street, Suite 200, Tulsa, OK; stated this case was heard at the last hearing and in his opinion the case is still open. The Board heard the application, took discussion, and there was motion to deny the appeal. That motion failed and nothing else happened. It is Mr. Shank's position that this unfinished business and needs to be finished by the Board. Mr. Shank also believes the Board

has lost jurisdiction to hear the case today. This case will need to be re-noticed and have a full hearing just as in any other case. If this Board were to do as Mr. Shank is requesting it should be placed on the agenda under unfinished business for the July 24th meeting.

Mr. Henke stated that the way this case is advertised is as a request for final determination and/or motion to reconsider. Mr. Henke believes that under the terms reconsideration the Board should have a motion from a member who voted with the prevailing vote.

Mr. Swiney made a point of information. He has discussed this case with council and Ms. VanValkenburgh, logically speaking the case is still open, still pending and not determined, or it was determined in the previous hearing and closed. Mr. Henke stated that if the case is still pending the Board can make a decision today. Mr. Swiney stated the Board cannot take action on the case today. If it is still pending it can be set on a future agenda with new notices sent out.

Mr. Van De Wiele asked if this item had been noticed. Mr. Swiney stated that today's item had not been noticed. Mr. Henke stated that it should have been.

Mr. Henke asked Mr. Swiney if he is of the opinion that the determination has been made, that the Board had four members voting and the motion failed. Mr. Shank's argument is the alternative motion was not made and that motion is still on the table for the Board to action on if the Board so chooses.

Mr. Van De Wiele stated that it has to be one or the other. Mr. Swiney agreed; that it has to be one or the other. Either the case has been determined and it is closed or the case has not yet been determined and needs to be determined on a future agenda.

Ms. Back checked the case file for the proof of mailing and legal notification. Ms. Back stated that the affidavit has not arrived at INCOG because it was such a quick notice, but the applicant has been charged for newspaper notification and mailings. Mr. Henke asked Ms. Back if the re-notice for the reconsideration request in this case would have been noticed. Ms. Back answered affirmatively.

Mr. Henke stated that to have a reconsideration means there is new information that has come to light since the previous meeting that would warrant a further review by the Board. Mr. Henke asked Mr. Shank if such information existed in his opinion. Mr. Shank stated not to his knowledge. Mr. Shank stated this is new territory for him but it is not new territory that Ms. Stead would move to deny one of his cases. That denial was usually followed with a motion to approve that either the motion won or it did not. Thus there was either finality giving the City something they had to enact or there could be an appeal filed in District Court. In this case that does not exist. There is Ms. Stead's motion to deny, it failed, and there was nothing more. Looking at Board procedure it is policy for the Board to use whatever the current Robert's Rules of Order stipulates. Mr. Shank believes the proper move in this case is that it continues on as

unfinished business because the code says there are three votes required to uphold or overturn the decision from a City official. He received the motion to deny that appeal and then nothing more happened. That "nothing" happening is not the same procedurally, as a motion to uphold his appeal; which would have either won or failed. To hold that it is, in essence, would be adjudication by silence. Robert's Rules of Order would stipulate that this is properly an unfinished item that needs to be placed on the next agenda under Unfinished Business.

Mr. Henke stated that he is comfortable with that statement, and this has probably happened three times in the eight years he has been on the Board. In previous meetings the Board had an alternative motion and neither motion has passed.

Mr. Van De Wiele asked if an item can fail by lack of a motion. Mr. Shank stated that he had found no support for that in Robert's Rules of Order.

Mr. White stated that a request for reconsideration can die for the lack of a motion. Mr. Henke concurred. Mr. Swiney stated that is a reconsideration of an action that was taken, the reconsideration of a determination. Mr. Henke stated that Mr. Shank is stating that the determination has not been made, the case is still open, and the Board needs to have the alternative vote.

Mr. White stated that as a reconsideration, if the Board is talking about a reconsideration, on the premise as this case was left at the last meeting that the appeal was denied, the two members that need to bring up the motion to have a reconsideration are Ms. Stead and Mr. Van De Wiele. Ms. Stead has retired from the Board and Mr. Van De Wiele will not be able to attend the next meeting.

Mr. Shank stated that everything Mr. White stated is correct procedurally, but he has made a two-tier request. His first request is that there has not been a determination from one which a winning voter would say "let's reconsider this", he is saying this case is not even there yet. Mr. Shank stated that Mr. White is correct, in that if the Board were to take the position that he lost, and he lost on a 2-2 vote to deny the motion, one of those voters would need to say reconsider. Mr. Shank does not concede that this case is there.

Mr. Van De Wiele asked Mr. Swiney if he was of the opinion that the Board has reached a final determination. Mr. Swiney stated that he has discussed this with his colleagues in the Legal Department, and they are of the opinion that the case has been finally determined. Having said that, Mr. Shank is an able jurist and he has discussed the case with him. They could certainly be wrong. Whether his or Mr. Shank's opinion is right or wrong, the ultimate decision remains with the Board.

Mr. Van De Wiele stated that what the Board needs to decide is whether there was a final determination made at the last hearing. If there was not a final determination made, then when is the Board going to hear the final determination.

Mr. White asked that if what the Board did, did not constitute final determination, what the Board needs to do at this point is to have a final determination. Mr. Van De Wiele stated the case must be re-noticed for a meeting in the future as unfinished business.

Mr. Henke stated that as the case was noticed, as the notice went out, it's a request for a final determination at this meeting. Or in the alternative a reconsideration which would be in the future. Mr. Henke stated this case has been properly noticed. If the Board wants to make a ruling on whether or not this case has had a final determination at the last meeting, the Board can act on that today. Mr. Swiney agreed with Mr. Henke's statement.

Mr. Van De Wiele stated that he would support the decision that the Board had not made a final determination.

Mr. Henke stated that the Board could entertain a motion that in BOA-21418 that the determination was upheld or denied. Mr. White asked Mr. Swiney which would be clearer. Mr. Swiney stated the Board would be determining today, by consensus or by vote, that the case was finally determined on June 28, 2012. The case is over and closed, now Mr. Shank has the right to appeal. Mr. Henke stated that is what Mr. Shank is asking of this Board today.

Mr. Shank stated that it was not. Mr. Shank stated that the first tier of his request is that a failure of a motion to deny is not the same as a failure of a motion denied and a failure of a motion to approve. Mr. Shank is asking the Board to say this case is unfinished business. He needs an opposing motion, a vote, and then there is a final determination.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 3-0-1 (Henke, Van De Wiele, White "aye"; no "nays"; Tidwell "abstaining"; Stead absent) that the action taken at the Board of Adjustment meeting on June 26, 2012, Meeting Number 1073, in the matter of Case No. BOA-21418, did not have a final determination on the matter as the motion that was made had failed at that meeting, was formally a motion to deny the appeal and that the matter remains not finally determined; for the following property:

LTS 1 THRU 12 & S30 VAC 47 ST ADJ ON N N7.5 VAC ALLEY ADJ ON S & W25 VAC 104 EAST AVE ADJ ON E BLK18, ALSUMA, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

Mr. Shank stepped forward, and stated that now that this case is unfinished business he would request that a full Board be present, if possible, to finish the vote. He understands that the date for legal notification for the July 24, 2012 has been missed so he would request a continuation to the next available date.

Mr. Swiney requested a point of order, if proper notice was given for today's meeting and the matter is properly on the table as of right now then it can be continued without further notice.

Mr. Van De Wiele stated that Mr. Tidwell has recused himself, he is not going to take Ms. Stead's vote away from her, if David makes such a motion he will vote against it. Mr. Henke agreed with Mr. Van De Wiele.

On **MOTION** of **WHITE**, the Board voted 2-1-1 (Henke, White "aye"; Van De Wiele "nay"; Tidwell "abstaining"; Stead absent) that the action taken is to **GRANT** the appeal of the determination of an administrative official; for the following property:

LTS 1 THRU 12 & S30 VAC 47 ST ADJ ON N N7.5 VAC ALLEY ADJ ON S & W25 VAC 104 EAST AVE ADJ ON E BLK18, ALSUMA, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

Mr. Tidwell re-entered the meeting at 2:45 P.M.

NEW BUSINESS

None.

BOARD MEMBER COMMENTS

None.

There being no further business, the meeting adjourned at 2:48 p.m.

Date approved: _____

8/24/12
Frank X. Henke, Jr.
Chair