

BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1077
Tuesday, August 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 Tidwell, Secretary Van De Wiele White, Vice Chair	Snyder	Back Sparger	Swiney, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Thursday, August 23, 2012, at 1:57 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.

Mr. Henke explained to the applicants that there were only four board members present at this meeting, and 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 and if two board members voted no today the application would be denied. Mr. Henke asked the applicants if they understood and asked the applicants if anyone would like to continue their application to the next meeting. No applicants made the request.

MINUTES

On **MOTION** of **TIDWELL**, the Board voted 4-0-0 (Henke, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Snyder absent) to **APPROVE** the **Minutes** of the August 14, 2012 Board of Adjustment meeting (No. 1076).

NEW BUSINESS

21454—Arthur Wallace

Action Requested:

Special Exception to permit carport in the required front yard in an RS-3 district (Section 210.B.10.g); Variance from extending 20 feet into the required front yard to 31 feet from the existing principal building (Section 210.B.10.c); Variance of maximum height from 10 feet to 11 feet - 4 inches (Section 210.B.10.d); Variance from the maximum allowed carport size from 20 feet x 20 feet to 19 feet x 30 feet (Section 210.B.10.a). **LOCATION:** 5136 South Troost Avenue **(CD 9)**

Presentation:

No presentation was made; applicant requested a continuance to the October 23, 2012 hearing. The applicant is in the process of securing a right-of-way license agreement or waiver, and it is a seven to eight week process.

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"; Snyder absent) to **CONTINUE** the request for a Special Exception to permit carport in the required front yard in an RS-3 district (Section 210.B.10.g); Variance from extending 20 feet into the required front yard to 31 feet from the existing principal building (Section 210.B.10.c); Variance of maximum height from 10 feet to 11 feet - 4 inches (Section 210.B.10.d); Variance from the maximum allowed carport size from 20 feet x 20 feet to 19 feet x 30 feet (Section 210.B.10.a) to the meeting on October 23, 2012; for the following property:

LT 7 BLK 3, LECRONE'S LAZY L ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21459—Rudy Mancino

Action Requested:

Special Exception to allow used car sales (Use Unit 17) in a CS district (Section 701); Variance to permit open air storage and display of merchandise offered for sale within 300 feet of an adjoining R district (Section 1217.C.2). **LOCATION:** 9768 East 11th Street **(CD 5)**

Presentation:

No presentation was made; applicant requested a continuance to the September 11, 2012 hearing.

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”; Snyder absent) to **CONTINUE** the request for a Special Exception to allow used car sales (Use Unit 17) in a CS district (Section 701); Variance to permit open air storage and display of merchandise offered for sale within 300 feet of an adjoining R district (Section 1217.C.2) to the meeting on September 11, 2012; for the following property:

BEG 898.61E NWC NW TH W82.63 S240 E82.63 S35 E19.9 TO W BDRY ARCH FEARS ADD TH N275 W18.66 POB LESS N65 FOR ST SEC 7 19 14 .425ACS, ARCH FEARS ADDN, B & W APTS ADDN RESUB PRT RUTH-ANNE ACRES, RUTH-ANNE ACRES AMD, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

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UNFINISHED BUSINESS

21458—Andrew Shank

Action Requested:

Variance to allow ground sign with movement within 11 feet of the driving surface of East 15th Street (Section 1221.C.2.b); Variance from the 200 foot separation from an R district required for a sign with movement (Section 1221.C.2.c). **LOCATION:** 1419 East 15th Street **(CD 4)**

Presentation:

Andrew Shank, 2727 East 21st Street, Suite #200, Tulsa, OK; stated this is an application for the installation of a new neon sign for Hideaway Pizza located on 15th Street. What triggered the requirements for the variances are the fact that the neon aspect of the sign that looks like pizza dough will rise and fall to simulate the tossing of the pizza dough. The applicant is not asking for a LED because it is a traditional neon sign. The hardship is the unique shape of the property, and this lot is 135 feet with frontage on Cherry Street and 60 feet deep. The code could also be stated as a hardship. The underlying purpose of the regulations for signs is to keep traffic safe from distractions. It is safe to say that there is an assumption within that regulation that if a person is traveling in town at less than 40 miles per hour, and this sign will be in an area where the posted speed limit is 25 miles per hour for the entertainment district. Because of that reduced speed of the subject area Mr. Shank thinks that regulation is a hardship. The applicant has spoken with Marquette, which is the closest residential property, and they are in support of the application. The sign will face east and west, it will not face any residential district.

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"; Snyder absent) to **APPROVE** the request for a **Variance** to allow ground sign with movement within 11 feet of the driving surface of East 15th Street (Section 1221.C.2.b); **Variance** from the 200 foot separation from an R district required for a sign with movement (Section 1221.C.2.c). This approval will be per plan on page 2.7 and 2.8; having found that the size and location of the lot in question as well as the nature of the residential zoned property across the street provides a hardship. In granting the variances the Board has found by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to this land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the 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 10 11 12 BLK 6, BELLVIEW ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

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NEW BUSINESS

21460—Jed Ballew

Action Requested:

Special Exception to permit a carport in the required front yard in an RS-3 District with an HP overlay (Section 210.B.10.g); Variance from extending 20 feet into the required front yard to 22 feet from the existing principal building (Section 210.B.10.c). **LOCATION:** 1591 Swan Drive **(CD 4)**

Presentation:

Jed Ballew, 3510 South Wheeling Avenue, Tulsa, OK; stated the Swan Lake is a historic preservation district and the lots are very unique in shape. The subject property is on a very steep slope and abuts on Swan Lake Drive. The owner wants a covering for their parking area. A carport is what was decided upon for the location based on the site and the setbacks. The existing conditions make it extremely difficult, if not impossible, to construct a garage. The hardship for the subject property would be that the existing conditions of the house are such that this design solution would be the most appropriate for the historic preservation district. The Historic Preservation Commission has issued a Certificate of Appropriateness for the carport. There are existing retaining walls on three sides of the site that create a courtyard area. The goal of the applicant is to cover that portion near the street to create a carport for the residence, and to affect the sight lines to and from the house as little as possible due to the historic preservation aspect of the property. To have the carport meet the letter of the code and have the footprint of the carport 20 feet by 20 feet the existing conditions of the house would be manipulated and creating supports that would not align with the existing walls. In Mr. Ballew's opinion that would be a lesser quality design solution and would be scrutinized by the Historic Preservation Commission as more of an afterthought and not as integral part of the existing structure.

Mr. Van De Wiele asked Mr. Ballew where the extra two feet were being obtained. Mr. Ballew stated there is a south wall that creates the courtyard, and the agenda packet site plan portrays three dots extending beyond that wall, the three dots are the columns that support an existing architrave. The line of the new carport would be the wall that runs east-west with the door opening, and it will align with the architrave making it two feet further north. Mr. Van De Wiele asked Mr. Ballew about the height of the carport in relation to the existing architrave. Mr. Ballew stated there will be a structure setting on top of the existing concrete and brick wall, so it will be approximately a foot taller than the existing architrave but will duplicate the same detailing of the architrave.

Interested Parties:

Tom McAlevy, 1586 Swan Drive, Tulsa, OK; stated his interest is how the carport is going to look, because there are carports and then there are carports. He asked Mr.

Ballew if the carport was going to be a flat roof. Mr. Ballew stated that it would be a flat roof so it would not be visible from the street. There will be drainage within the carport but the sight lines of the perimeter will continue throughout. Mr. McAleveey stated that the Swan Lake area is very unique and he would not want to see the area changed very much.

Mr. Van De Wiele asked Mr. Ballew to explain the drainage of the carport. Mr. Ballew stated the drainage will flow primarily to the east and west side of the carport going into the owner's existing courtyard to a planter area. The only time water will drain to the street is if the permeable area of the courtyard does not hold the drainage.

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"; Snyder absent) to **APPROVE** the request for a **Special Exception** to permit a carport in the required front yard in an RS-3 District with an HP overlay (Section 210.B.10.g); **Variance** from extending 20 feet into the required front yard to 22 feet from the existing principal building (Section 210.B.10.c). This approval will be per plan on pages 5.11, 5.13, 5.14 and 5.15. Finding that the shape of the lot is such with the historical preservation district restraints upon it that there is no place to construct a garage, and installing the standing seam metal roof over the existing architrave it will provide the carport. The additional two feet extending out to the existing structure of the architrave as it stands. For the special exception the Board has found that it will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. For the variance the Board has found 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:

E 78 LT 11 BLK 1, SWAN PARK, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21461—John Sanford Architects

Action Requested:

Variance from the minimum frontage requirement from 150 feet to 100 feet in the CS Zone (Section 703, Table 2). **LOCATION:** 1011 South Garnett Road **(CD 3)**

Presentation:

John Sanford, 9726 East 42nd Street, Suite 153, Tulsa, OK; stated this facility is a motel project with approximately 110 rooms. The structure was built in the 1970s and is a nice structure, too nice to raze. His firm was hired to lay out some concepts on what the older structure could be. Currently the motel is remodeling the facility, all 110 rooms and the public areas. One of the concepts is to turn the existing structure into two separate motels, the Knights Inn and a Super 8. There are 100 feet frontage on 11th Street and 343 feet frontage on Garnett. Both motels will share the entrance and exits and share the pool, but will be two separate facilities. The motel will be divided by adding fire walls between the two facilities. The look of the motel will not be changed because there is no addition beyond the existing exterior footprint of the building. There will be a new lobby area and new support areas created for the Knights Inn, and there will be a large breakfast area and lobby area in what was the old Days Inn. This concept is being established in a lot of cities.

Mr. Van De Wiele asked Mr. Sanford if he was turning one building into two buildings. Mr. Sanford said that was correct. He has been through the permitting process with the City of Tulsa and been approved, appearing before the Board of Adjustment is the last step in the process.

Mr. White asked Mr. Sanford to explain what his hardship for the subject property would be. Mr. Sanford stated is that the hardship is the lack of 150 feet frontage on 11th Street, there is only 100 feet; but there is 343 feet on Garnett Road. Both hotels would use the existing ingress and egress points so the total exposure is met.

Mr. White asked Mr. Sanford where the firewalls would be installed. Mr. Sanford stated they will be added between the two buildings. The required distance is met and has been approved by the permit center at the City of Tulsa. The site plan in the Board's agenda packet shows the proposed layout; the top rectangle on the plan will be the Knights Inn and the bottom three buildings will be the Super 8. Both facilities will have improvements made to the firewalls, a new metal roof will be extended over the areas for protection, and the exterior corridors will be upgraded also.

Interested Parties:

Paul Enix, Senior Code Official, Building Plan Review, City of Tulsa, 175 East 2nd Street, Tulsa, OK; stated the City has reviewed the proposed plans and the code requirements are being met. It comes down to the distance from the building to the property line and fire resistance rating dependent upon the distance. Mr. Sanford's design meets the requirements. The City has no objection to what the intent is in order for Mr. Sanford to divide the subject property in the proposed fashion. The lot split will come before the City too, before being presented to the Planning Commission, and it will be forwarded since it meets the code requirements for the fire resistance rating as the building are separated.

Rebuttal:

Mr. Sanford came forward and Mr. Henke asked Mr. Sanford to tell the Board about his hardship for the subject property. Mr. Sanford stated that the hardship is what to do with an older 110 unit facility. This property is not going to become a Hampton Inn or LaQuinta Inn. There is no other major franchise that will let the existing building be split. The building is too nice to tear down. If it is made into a Super 8 Motel there never be 110 rooms rented at this location because the market in that area will not support that. The idea of a Super 8 Motel and a Knights Inn Motel allows for more flexibility and to increase the market exposure, which will increase business by bringing more people to the area. This idea will bring in more tax revenue for the City and this idea is not unique, because it is being done in other cities. This idea fits this location. Another hardship is that there is not 150 feet of frontage on 11th Street. Mr. Henke stated that he did not necessarily disagree with Mr. Sanford but the Board needs a hardship that is not of monetary value or self imposed. The hardship needs to be something peculiar about the property. Mr. Sanford stated that the peculiarity would be the L shaped lot that cannot meet the street exposure on one side.

Mr. Van De Wiele asked Mr. Sanford if there were going to be separate owners, and Mr. Sanford stated that initially there would not be two separate owners but eventually there would be. The subject property would need to be divided into separate legal entities for two franchises to come onto the site. This site is an ideal location because there are not a lot of motels or hotels in this area, and it has good access to I-44. This area fits a market need for someone that wants a lower price point for a motel.

Mr. Van De Wiele asked Mr. Sanford why the proposal of the subject property was drawn up the way it was presented. Mr. Sanford stated that it seemed to be a better site fit and was easier to add the fire separation walls without a lot demolition to the existing building.

Mr. Swiney asked Mr. Sanford if the northeast corner lot was under different ownership, and what was on the lot. Mr. Sanford stated that the northeast corner is under different ownership and it is currently a restaurant. Mr. Swiney stated that probably in the past the frontage requirement was not as large as it is today, and if the lot the restaurant had not been separated from the subject property this hearing would not be taking place because the hotel would have enough frontage.

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"; Snyder absent) to **CONTINUE** the request for a **Variance** from the minimum frontage requirement from 150 feet to 100 feet in the CS Zone (Section 703, Table 2) to the meeting of October 23, 2012; for the following property:

**LT 1 BLK 1, CROSSROADS MALL ADDN, MOTEL 6 FIRST RSB PRT L1 & 2B1
CROSSROADS MALL ADD, CITY OF TULSA, TULSA COUNTY, STATE OF
OKLAHOMA**

21463—Milo Reno

Action Requested:

Variance to reduce the number of required parking spaces from 43 to 25 (Section 1205.C). **LOCATION:** 11321 East 19th Street South **(CD 6)**

Presentation:

Milo Reno, 5135 East 108th Street, Tulsa, OK; stated this site is for Loaves and Fishes which feeds hungry families and provides them groceries. Loaves and Fishes has been in this facility since 1987. A demolition permit was applied for and granted, and after the demolition was complete it was discovered that this variance request needed to come before the Board of Adjustment before anything else could be done on the site. There is an agreement with the church next door to the subject property allowing Loaves and Fishes to use their parking spaces as needed. Mr. Reno stated that he has, and presented, a written lease agreement with the church to lease the needed spaces that would be used on their property. Loaves and Fishes has a good working relationship with the church and has used their parking lot for the past 15 years. The surrounding businesses have also offered the use of their parking lots for Loaves and Fishes patrons if needed. The extra parking spaces are not normally something that is needed, but because of the code the variance request is being presented to the Board. When the remodeled seating within the facility was completed it is less than what it has been, there was a loss of six to eight seats after the remodel. The hardship is that the ministry cannot operate if the variance is not granted, and the people that rely on Loaves and Fishes for assistance will not have the help they need.

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"; Snyder absent) to **APPROVE** the request for a Variance to reduce the number of required parking spaces from 43 to 25 (Section 1205.C), finding that the parking lot lease agreement with the adjacent church satisfies the necessity for the parking requirement. 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 E207 THEREOF BLK 1, TRI ANGLE COMMERCIAL PARK PT RSB W50L20B3 21 GARNETT PL, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21464—Derek Deuvall

Action Requested:

Verification of the spacing requirement for a liquor store of 300 feet from blood banks, plasma centers, day labor hiring centers, bail bond offices, pawn shops, and other liquor stores (Section 1214.C.3). **LOCATION:** 2110 South Sheridan Road (CD 5)

Presentation:

Derek Deuvall, 2110 South Sheridan Road, Tulsa, OK; no presentation was made but the applicant was available for any questions.

Mr. Henke stated that the Board was in receipt of the applicant's survey.

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"; Snyder absent) the Board **ACCEPTS** the applicants spacing verification based upon the facts in this matter as they presently exist for a liquor store from blood banks, plasma centers, day labor hiring centers, other liquor stores, bail bond offices and pawn shops, subject to the action of the Board being void should another referenced conflicting use be established prior to this liquor store. This acceptance is applicable only to the address of 2110 South Sheridan Road because the legal description provided for this application is the entire shopping center, which covers a great deal more than the spacing verification; for the following property:

BEG 50W & 250S NEC NE TH S1012.56 W630.88 N1211.54 E440 S200 E200 POB SEC 15 19 13 16.76ACS, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21465—Lee Brennan

Action Requested:

Variance of the number of permitted business signs from 1 to 2 (Section 1221.C.8.a); Variance of the allowed display surface area from 81.2 square feet to 107.2 square feet (Section 1221.E.3.b). **LOCATION:** 109 North Detroit Avenue (CD 4)

Presentation:

Lee Brennan, 109 North Detroit Avenue, Tulsa, OK; stated he has a restaurant and it has two signs, one on Detroit Avenue and one in the alley for the patio. Since the City does not recognize alleyways as frontage he is forced to use the Detroit Avenue side as his frontage. There is zero visibility from Detroit Avenue and it is a one-way street. He is involved in developing downtown, and the subject property is an old factory being converted to a workable restaurant.

Mr. Van De Wiele asked Mr. Brennan what type of sign is in the rear of the building. Mr. Brennan stated it is a two-sided circular sign. The sign on Detroit will be lit and shining south, and on the rear the sign will be a digital graphic.

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”; Snyder absent) to **APPROVE** the request for a Variance of the number of permitted business signs from 1 to 2 (Section 1221.C.8.a); Variance of the allowed display surface area from 81.2 square feet to 107.2 square feet (Section 1221.E.3.b), and this is subject to conceptual site plan on page 9.7 for the location and on page 9.8. Finding that due to the unique size, shape and location of the property that it poses a hardship, and 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:

S25 LT 5 BLK 44, S20 N75 LT 5 BLK 44, TULSA-ORIGINAL TOWN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21466—Robert Hefley

Action Requested:

Variance of the north setback from an abutting R District from 75 feet to 3 feet; Variance of the east setback from an abutting R District setback from 75 feet to 65 feet; Variance of the building setback from centerline from 50 feet to 30 feet (Section 903); Special Exception to remove screening requirement from north and east property lines (Section 212.C). **LOCATION:** 543 South Victor Avenue, 539 South Victor Avenue, 537 South Victor Avenue, 533 South Victor Avenue **(CD 4)**

Mr. White recused himself and left the meeting at 2:03 P.M.

Presentation:

Robert Hefley, 508 South Troost, Tulsa, OK; stated he has an electrical contracting business and it has operated out of the South Troost address since 1984. Mr. Hefley has expanded his business on South Troost so much that he no longer has room for expansion. He bought the subject property about two years ago, and it had two existing structures on it. One of the structures is a two-story building that was built in 1921 and the other structure is a metal building that was built about 20 years ago. He would like to add another building to the subject property which would be a warehouse for storing equipment and parking his company vehicles in. He is currently using the existing metal building on the subject property for storing equipment. Mr. Hefley hired a architect and that is when it was discovered that the subject property on the north side has an IL zoning and the other portion has an IM zoning. The front façade of the existing building will be mimicked for the new expansion with overhead doors for trucks. The existing 1921 building will be the future offices of his business. The 1921 building now sits on the property line and to be able to match the line of that building he would like to build the new building on the property line. There is an alley on the east side of the property. The subject property is surrounded by commercial businesses. Mr. Hefley stated that his hardship is that the IL zoning for the last lot while the others are in an IM zoning, but all the lots have just recently been combined through INCOG.

Mr. Van De Wiele asked if the property immediately to the north was a business or residence. Mr. Hefley stated that it is a residence. When he bought the subject property he met the owner of the residence, and he asked the owner to let him know if he were interested in selling he would be interested in purchasing the residence.

Mr. Van De Wiele stated that the request for the variance of 75 feet to 3 feet is the one request that is giving him concerns, because he thinks 3 feet is too close to the property line. Mr. Hefley stated that there is a driveway for the residence between the residence and the property line.

Mr. Van De Wiele asked Mr. Hefley if he was going to have a space between the two-story building and the proposed warehouse. Mr. Hefley stated there is a proposed breezeway between the existing two-story building and the proposed warehouse. Mr. Van De Wiele asked Mr. Hefley if he could move the proposed warehouse five feet to the south, making less of a breezeway. Mr. Hefley stated that it would be possible but he would like to maintain as much of the breezeway as possible because there are windows on that side of the two-story building.

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, Tidwell, Van De Wiele "aye"; no "nays"; White "abstaining"; Snyder absent) to **APPROVE** the request for a **Variance** of the north setback from an abutting R District from 75 feet to 8 feet; **Variance** of the east setback from an abutting R District setback from 75 feet to 65 feet; **Variance** of the building setback from centerline from 50 feet to 30 feet (Section 903); **Special Exception** to remove screening requirement from north and east property lines (Section 212.C), subject to conceptual plans on pages 10.11 and 10.12, specifically noting that the proposed one-story warehouse building is to be redesigned and relocated approximately five feet to the south. The Board has found that these lots are of a unique character and that the proposed to match the existing front façade of the existing two-story building would be desirable for this improvement. Finding for the variances 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. Finding for the special exception the Board has found that the Special Exception will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; for the following property:

LTS 27 & 28 BLK 8, LTS 29 & 30 BLK 8, LTS 31 & 32 BLK 8, LTS 33 & 34 BLK 8, ABDO'S ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

Mr. White re-entered the meeting at 2:27 P.M.

21467—Lamar Central Outdoor, LLC

Action Requested:

Appeal of the Determination of an Administrative Official (Complaint #660493-1) regarding the relocation of an outdoor advertising sign; **OR** Variance of the spacing requirement for an outdoor advertising sign of 1,200 feet to 909 feet from another outdoor advertising sign on the same side of the highway (Section 1221.F.2).

LOCATION: 10342 East 58th Street South, 10344 East 58th Street South, 10332 East 58th Street South (CD 7)

Presentation:

Bill Hickman, Lamar Outdoor Advertising, 7777 East 38th Street, Tulsa, OK; stated he would like to start his presentation with the variance request and then, if necessary, discuss the appeal.

Ms. Back stated that she had forgotten to introduce the fact that Legal Counsel had some information they would like to present for this case.

Mr. Henke recognized Mr. Swiney.

Mr. Swiney stated there is an agreement between the City of Tulsa and the Oklahoma Department of Transportation that involves this sign. The agreement basically says that the City of Tulsa will assist in relocating any sign that is taken or removed by the Department of Transportation. The sign that Lamar is interested in is a sign that was near the Interdispersal Loop that was removed due to ODOT widening the highway. Because of this agreement between the City of Tulsa and the Oklahoma Department of Transportation the City would like to recommend the variance in order to assist Lamar in relocating the sign that was taken. The Oklahoma Department of Transportation also supports this variance. Mr. Swiney stated there is also City staff present in support of the variance and for any questions the Board may have.

Mr. Hickman continued. This case does involve a sign that was taken by ODOT, and as was said ODOT is in favor of this variance. There is a relocation permit that has been issued by the state that is in compliance with a fairly new state statutory law. This state statutory law essentially provides, in Section 1275.C.4, a method to minimize the cost acquiring outdoor advertising sign property interests and to fulfill the statutory intent it reduces the restrictions at a state level with permitting of outdoor advertising signs so they can be relocated. In this particular case, the sign to be relocated is 909 feet away from another existing sign structure, but as indicated in a letter from Mrs. Smith the Oklahoma Department of Transportation has issued a state permit pursuant to this statutory provision that allows for the relocation at the reduced spacing. In a final step, the sign is now coming to the City of Tulsa to obtain a relocation permit as well. At this point in time, there is a stretch of Highway 169 that has an existing Lamar billboard and the proposed site is approximately 900 feet away with a site of where an existing billboard has been removed. Essentially there will be no new signs added to this stretch of highway, and in compliance with intent of the City of Tulsa sign ordinance, through

the spacing, regulate the number of signs on this stretch of highway. Where the sign has come down the proposed sign will be moved approximately 200 feet to the proposed billboard site. The number of signs in the inventory of signs along this stretch of highway is not increasing, and Lamar feels this in compliance with the spirit of the City of Tulsa sign code and the spacing requirements to control the number of signs in a specific stretch of highway.

Mr. Van De Wiele asked Mr. Hickman if the sign that was removed is the sign that was taken by ODOT. Mr. Hickman stated the sign has not actually been removed because of an ODOT taking, Lamar is taking the sign down in order to install the proposed billboard in the proposed location. The idea is that Lamar did not want to come before the Board of Adjustment to request the addition of another sign to this particular stretch of highway, and be asked the question about having another sign in the area. Lamar wanted to be able to answer that question with an affirmative no. So Lamar will remove the billboard and utilize the relocation permit process that is allowed at the state level.

Mr. Henke asked Mr. Swiney if the City of Tulsa was going to assist in the relocation of the sign. Mr. Swiney stated the City recommends the relief and the City will support the effort of the applicant.

For a point of information Mr. Swiney asked Mr. Hickman to explain where the sign that was lost due to the ODOT expansion was located. Mr. Hickman stated that there have been many highway projects across the City of Tulsa that ODOT has been involved in, and Lamar has taken down a large number of signs throughout the years as a result of a highway project. The project that is being discussed today is a part of the bridge project that the City of Tulsa received the federal grant for on I-244 coming into the downtown area, which is just a few blocks away from City Hall.

Mr. Van De Wiele asked Mr. Hickman why this sign was being moved, he did not understand the correlation between the highway project, the sign, and the proposed sign location on Highway 169. Mr. Hickman stated the Highway 169 location was a location that Lamar was able to secure for relocation purposes. The sign is being relocated due to a ODOT highway project and Lamar must find a place to relocate that sign to and this stretch of highway happen to be a site that met the other requirements but for the spacing. That is why Lamar is before the Board of Adjustment today, because the process must be gone through in order to put the sign back up.

Mr. White asked Mr. Swiney if it was even necessary to be before the Board of Adjustment since there were changes in the state law. Mr. Hickman stated that is the purpose of the administrative official appeal. Lamar would essentially argue that the City or the state statute would preempt, or that the City does not have city ordinance addressing this particular situation. Because of the newly enacted state statute the literal enforcement of the City ordinance would be a hardship because it does not address this particular situation, which the removal of sign sites because of a taking. Lamar has had meetings with City staff and staff essentially said that they had followed the literal reading of the ordinance and they recognized the fact that it was not directly

addressed. Therefore, City staff recommended that Lamar appear before the Board of Adjustment.

Mr. Swiney stated that City ordinance seems to take precedence in this location over the state statute, and that is why he sees this as a clear case for a variance.

Interested Parties:

Adele Lukken Peterson, 18074 Bearpath Trail, Eden Prairie, MN; stated she is before the Board representing her family and Lukken Properties. She requests the Board uphold the previous decision of the administrative official who ruled that the spacing requirements of 1,200 feet be met. Her family had a Lamar billboard located on their property and they did not renew the contract with Lamar so they removed the billboard. Now they are proposing to install a new billboard approximately 900 feet from another billboard. To meet the spacing requirements of 1,200 feet, to the north and to the south, her family sees the point is her property. Lamar did not lose the removed billboard because of ODOT, they lost it because the family did not renew the Lamar contract. If this request is granted her family would not have any billboard potential on their property. Ms. Peterson feels that Lamar is using ODOT and the City to put her family out of the billboard business.

Mr. Van De Wiele asked Ms. Peterson if she was interested in a new contract with Lamar. Ms. Peterson stated her family is interested in installing their own billboard, and they are in discussion with other billboard companies about a sign.

Mr. Tidwell how long the removed billboard had been in existence. Ms. Peterson stated the billboard started with Stokely approximately 11 years ago, and Lamar took over the sign about seven years ago. When the contract came up for renewal it presented the opportunity for her family to investigate other billboard avenues. If ODOT and the City helps Lamar place their sign at the proposed site it will destroy any billboard business opportunities her family may have. If this request is granted it would be a loss of revenue for her family and the potential to have a billboard on the family property.

Jim Edwards, 3201 East 31st Street, Tulsa, OK; stated he is a friend of Ms. Peterson and her family, and has a friend that is in the billboard business. Lamar has many other options as to where to place the ODOT displaced billboard, and, obviously, the Peterson family has no other option.

Rebuttal:

Bill Hickman stated Lamar has no other alternatives. It is not the City of Tulsa's or the Board of Adjustment's interest or desire to enter into the outdoor advertising business, and start picking locations for sign companies. At this time there are no other options for relocation. This proposed site is the only one that Lamar has secured and the only one that is before this Board and the only site that has been discussed with the City of Tulsa and applied for a permit. Mr. Hickman stated, in regards to Ms. Peterson's comments about being put out of business, Lamar has the state permit and followed the state law and the City ordinances. With that state permit the Petersons can not build on

their property. The Petersons made a business decision by choosing not to renew their lease with Lamar; the parties were unable to reach an agreement. As a result the sign was removed and Lamar was able to move a few hundred feet to the north to the proposed properly zoned legal site and secure a state permit through the statutory process. What drove this legislation and this process is because the State of Oklahoma and the sign companies have spent hundreds of thousands of dollars fighting each other in the court system, so the concept was to create an opportunity to allow for relocation by reducing the restrictions on where a sign could be located. With all due respect to the Peterson family, they made a business decision that opened an opportunity for a sign to be relocated. Lamar has secured the lease and has followed the state law to secure the state permit. This is not about sign clutter, this is about the Petersons wanting to make a profit. If Lamar were not doing this there would be another sign on the Peterson property, so the issue is not signs being built but who is going to build the sign. A property owner has no guaranteed right to billboard income on a property that is a private negotiation or private contract.

Mr. Van De Wiele told Mr. Hickman he having a hard time grasping the concept of the billboard relocation, and he asked Mr. Hickman where Lamar lost the billboard that is now being relocated. Mr. Hickman stated the billboard was on I-244 where the new bridge was constructed to cross the Arkansas River coming into downtown Tulsa, as a result of a federal grant. The sign was in the area of that construction project. Mr. Van De Wiele asked Mr. Hickman to confirm that the removal of the billboard on the Peterson's property, that was presented in the Board's agenda packet, was purely a business issue. Mr. Hickman gave affirmation to Mr. Van De Wiele's statement, and stated that Mr. Van De Wiele was understanding correctly.

Mr. Tidwell asked Mr. Hickman that if Lamar could have come to terms with the Petersons would the sign that has been removed remain on the Peterson's property. Mr. Hickman stated that he did not know. Mr. Hickman continued by saying that the sign had been existence for a period of time and it is possible and could not answer the question in a speculative manner. Mr. Hickman stated that finding legal locations at the full spacing and all the other requirements in the City of Tulsa are very difficult but not impossible. Even finding relocation sites are, likewise, very challenging. When this situation developed with the Petersons it was a noticeable opportunity for Lamar to secure a relocation permit as a result.

Mr. Van De Wiele asked Mr. Swiney about the relocation statute. Mr. Van De Wiele stated that common sense would dictate that if there is a sign being lost on I-244, should that sign be relocated somewhere in that vicinity. Mr. Van De Wiele feels that the spirit of the statute does not tell a person that if they loose a billboard on the south side of town it can be relocated on the north side of town. Mr. Hickman stated that Lamar is following Paragraph A in Section 1275, which states "if the structure to be removed is visible from a roadway subject to the regulatory control of the Department inside an incorporated area, which I-244 and Highway 169 are both controlled highways and both in the City of Tulsa, the relocation site shall be inside the same incorporated area, i.e., the City of Tulsa, and shall be visible from a roadway subject to the regulatory

control of the Department, i.e., U. S. 169. Mr. Hickman stated that the State of Oklahoma recognizes the fact that to craft legislation or force sign companies to relocate to a specific area where a sign is impacted by a highway project is not feasible or manageable. Thus legislation and the state provided flexibility, as quoted in Paragraph A.

Mr. Swiney stated in an academic argument, both avenues lead to the same place. The City staff has told Lamar that they can not install a sign because the 1,200 foot distance requirement is not met, so Lamar is appealing that decision. Or to use the variance process, Lamar is requesting a variance be granted so they can place their sign where they would normally not be able to place a sign. The Board can look at it from either point, but Mr. Swiney stated he saw this request as a variance.

Mr. Jim Edwards came forward and stated that the business decision the Petersons made was based on the protection of the City of Tulsa ordinance. Without any notification that the protection was in anyway at risk, Ms. Peterson she made the decision. If the ordinance is taken away it would change the thought process of her decision.

Mr. Hickman came forward and stated that the laws of the State of Oklahoma are published and are available to all. Anyone in the advertising business is aware of this specific provision and the specific section of the statutory law that addresses outdoor advertising and the regulation of outdoor advertising.

Comments and Questions:

Mr. Van De Wiele stated that he does not know how the Board is going to vote on this decision, but this case seems like Lamar is using a relocation permit to circumvent the business negotiations between the two parties. This case seems more like a new sign rather than a relocated sign.

Mr. White stated that he still questions whether the Board should be hearing this case, because the state law does not stipulate the sign must be relocated in the immediate area.

Mr. Swiney stated that it does seem to be a common sense judgment, that if a sign is being taken down that a replacement sign should be in the general area. He does a lot of work in condemnation and the relocation of a home owner's house becomes an issue, it is nice to put them in the same vicinity but the law requires that the home owner be supplied with equivalent housing. This case is the same principle. The hardship, obviously, is the ODOT taking of the Lamar sign against Lamar's will. The City of Tulsa's place in this case is to assist Lamar in obtaining what is rightfully theirs.

Mr. Tidwell stated that under the state statute this Board does not have a lot of options.

Mr. Van De Wiele stated that if the sign that was taken by ODOT were still in place this case would not be granted a variance, because that would place a new sign within 600 feet of other signs.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Tidwell, Van De Wiele, White “aye”; no “nays”; no “abstentions”; Snyder absent) to **DENY** the Appeal and to **UPHOLD** the Determination of an Administrative Official (Complaint #660493-1) regarding the relocation of an outdoor advertising sign; for the following property:

**ALL OF LT 3, BLK 18, TULSA SOUTHEAST IND DIST B12A-18 RESUB PRT
TULSA SE IND&EXT, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

On **MOTION** of **WHITE**, the Board voted 3-1-0 (Henke, Tidwell, White “aye”; Van De Wiele “nay”; no “abstentions”; Snyder absent) to **APPROVE** the request for a **Variance** of the spacing requirement for an outdoor advertising sign of 1,200 feet to 909 feet from another outdoor advertising sign on the same side of the highway (Section 1221.F.2), sighting the hardship is the reality of the introduction of a new state law, whereby, Title 69 OS 1275.C.4, an advertising sign was removed and the sign in this case will be replacing the removed sign in compliance with the cited State Statute. 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:

**ALL OF LT 3, BLK 18, TULSA SOUTHEAST IND DIST B12A-18 RESUB PRT
TULSA SE IND&EXT, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

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OTHER BUSINESS

None.

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NEW BUSINESS

None.

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BOARD MEMBER COMMENTS

None.

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There being no further business, the meeting adjourned at 3:07 p.m.

Date approved: SEPTEMBER 11, 2012

Chair