

BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1081
Tuesday, October 23, 2012, 1:00 p.m.
Tulsa City Council Chambers
One Technology Center
175 East 2nd Street

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	OTHERS PRESENT
Snyder Tidwell, Secretary Van De Wiele White, Vice Chair	Henke, Chair	Miller Back Sparger	Swiney, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Thursday, October 18, 2012, at 11:08 a.m., as well as at the Office of INCOG, 2 West Second Street, Suite 800.

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

Mr. White 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 or her 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. White asked the applicants if they understood and asked if there were any applicants that wanted to continue their case to the next meeting. No applicant stood up nor made a request to continue their case to the next meeting.

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 (Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; none "abstaining"; Henke absent) to **APPROVE** the **Minutes** of the October 9, 2012 Board of Adjustment meeting (No. 1080).

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UNFINISHED BUSINESS

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 East **(CD 3)**

Presentation:

The applicant has withdrawn this case; no action required.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

No Board action is required.

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NEW BUSINESS

21482—Stephen Schuller

Action Requested:

Variance request to use portion of a communication tower for attaching three (3) signs (Section 1204.C.3.e); Variance to allow sign height from 50 feet to 160 feet, abutting a freeway corridor (Section 1221.E.1); Variance to allow three (3) outdoor advertising signs not located at business address (Section 1800). **LOCATION:** 407 North Cincinnati Avenue **(CD 4)**

Presentation:

The case needs additional relief and the applicant has requested a continuance to the November 13, 2012 meeting.

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 (Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; none "abstaining"; Henke absent) to **CONTINUE** the request for a Variance request to use portion of a communication tower for attaching three (3) signs (Section 1204.C.3.e); Variance to allow sign height from 50 feet to 160 feet, abutting a freeway corridor (Section 1221.E.1); Variance to allow three (3) outdoor advertising signs not located at business address (Section 1800) to the Board of Adjustment meeting on November 13, 2012; for the following property:

**LT 7 LESS RY & W/2 VAC ALLEY ADJ ON E BLK 21,TULSA-ORIGINAL TOWN,
NORTH TULSA, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

21485—Kinslow, Keith & Todd

Action Requested:

Variance of the building setback from centerline from 100 feet to 65 feet for a new building in an IM district (Section 903). **LOCATION:** 5929 East 15th Street South (CD 5)

Presentation:

The case needs additional relief and the applicant has requested a continuance to the November 13, 2012 meeting.

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 (Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; none "abstaining"; Henke absent) to **CONTINUE** the request for a Variance of the building setback from centerline from 100 feet to 65 feet for a new building in an IM district (Section 903) to the Board of Adjustment meeting on November 13, 2012; for the following property:

**BEG 344W & 40N SECR SW NE N200 W100 S200 E100 POB & E100 OF N100 OF
S340 W979.9 SW NE SEC 10 19 13, CITY OF TULSA, TULSA COUNTY, STATE OF
OKLAHOMA**

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UNFINISHED 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'-0" x 20'-0" to 19'-0" x 30'-0" (Section 210.B.10.a). **LOCATION:** 5136 South Troost Avenue East **(CD 9)**

Presentation:

The applicant was not present at this time. The case was moved to the end of the agenda to allow the applicant time to arrive for the meeting.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

No Board action on this case at this time.

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NEW BUSINESS

21481—Will Wilkins

Action Requested:

Verification of the spacing requirement for an Adult Entertainment Establishment (Use Unit 12a - bar use) of 300 feet from a park, school, or church in the CBD District (Section 1212.a.C.3.b). **LOCATION:** 111 North Main Avenue East, Suite C **(CD 4)**

Presentation:

The applicant was not present. The Board had a copy of the survey therefore the case was acted upon.

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 (Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; none "abstaining"; Henke absent) based upon the facts in this matter as they presently exist to **ACCEPT** the applicants request for a **Spacing Verification** for an Adult Entertainment Establishment, subject to the action of the Board being void should another referenced conflicting use be established prior to this Adult Entertainment Establishment; for the following property:

ALL LTS 4 & 5 & S40 LT 6 BLK 41,TULSA-ORIGINAL TOWN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21483—Zach Anderson

Action Requested:

Variance to permit a second dwelling in an RS-3 district to permit a garage apartment (Section 207). **LOCATION:** 2540 East 14th Street South **(CD 4)**

Presentation:

David Anderson, 2540 East 14th Street, Tulsa, OK; stated he opened a permit in 2008 to build a garage to replace an old garage that had been torn down in 2005. When he opened his permit in 2008 he had included a second story that included living quarters. He finished the construction of the garage with an open space above to be finished out at a later date because of a financial shortage. In 2009 he opened a separate permit to renovate the building by adding walls for a full bathroom, a full kitchen, and a staircase leading to the living quarters above the garage. He also had the garage metered separately. His full intention was to rent the garage living quarters as an apartment, and it has been occupied since 2009 as a rental unit. Mr. Anderson stated that he was not aware of the violation until he had placed his property on the market for sale. At that time he was informed that he could not advertise the property as having a rental unit, and that is why he is before the Board of Adjustment today. Mr. Anderson stated there are many other garage apartments in the area. He offered to submit a petition signed by neighbors stating that they are aware he is renting his space above the garage as a garage apartment. Mr. Anderson stated that he had done this same thing to another property located at 1317 South Frisco Avenue and there had been no issues, and the Frisco neighborhood is similar to the subject neighborhood.

Mr. Van De Wiele asked Mr. Anderson if the garage had always been designed and presented as a garage apartment on the upper floor. Mr. Anderson stated that was correct. Mr. Van De Wiele then asked if there had ever been a discussion at the permitting office concerning multiple residences on one lot. Mr. Anderson stated that he did not remember any such conversation. He thought he was obvious about what he was doing because the building plans had a second story with a floor plan, especially the second time he filed for a permit just to renovate the existing garage for adding the full bathroom, kitchen and stairway leading to the living quarters. His non-experience led him to believe it was a non-issue.

Mr. Van De Wiele asked Mr. Anderson what his hardship for this case is. Mr. Anderson stated that his hardship is the fact that he thought he was doing everything necessary by filing for the building permits and being approved by the City. Now three years after the fact he finds out he is not able to use the garage for its intended use. This garage apartment is not abnormal for the neighborhood and he does not think it degrades the neighborhood in anyway.

Ms. Snyder asked Mr. Anderson if he was still planning to sell the house. Mr. Anderson stated that he was still intending to sell the house. Matter of fact, this process is delaying his move out of the country for his company.

Mr. Van De Wiele asked Mr. Anderson if had completely rebuilt the garage. Mr. Anderson answered affirmatively. Mr. Van De Wiele asked he was aware if the previous garage had a garage apartment. Mr. Anderson stated not to his knowledge, but he thought the previous garage had a large second story. Mr. Van De Wiele stated that he had read the Board agenda packet and there appears that there was a one-story garage apartment in existence before the code went into effect in 1970.

Ms. Back stated that the previous garage on South Frisco had been built to have servant's quarters in the second story, and that is what was being remodeled in that garage.

Interested Parties:

Thomas Neal, President of the Renaissance Neighborhood Association, 2507 East 11th Place, Tulsa, OK; stated the subject property is in the Renaissance neighborhood. Under the Presidency of Glen Hall a complaint about the subject property was filed with the neighborhood association. Mr. Neal performs residential design and is an A.I.A. associate member. At the time of the complaint he came to City Hall and met with the plan reviewer, Mr. Mitchell, and looked at the original plan submission. On the plan there was a $\frac{3}{4}$ bath, a laundry unit, and a row of cabinets. Mr. Neal asked Mr. Mitchell, the plan reviewer, why this submission was not being called a garage apartment. Mr. Mitchell stated because there was not a sleeping alcove or bedroom on the plans. Mr. Neal suspects because of that interpretation this case was not sent to zoning review. If it had been sent for zoning review this case would have been flagged. Mr. Neal acknowledged there are garage apartments all throughout the neighborhood and that there is a garage apartment next door to the subject property. The difference is that those units are legally occupied because they were grandfathered into the zoning code. The neighborhood's concern is new people coming into the neighborhood that will attempt to do exactly as Mr. Anderson is attempting to do. Many of the garage units in the neighborhood are empty, and have been empty long enough that the property has reverted to single family zoning. Another issue for the subject property is parking with the possibility of multiple units on one property.

Mr. Tidwell asked Mr. Neal how many members were on the Renaissance Neighborhood Association Board. Mr. Neal stated there are approximately ten board

members that typically attend the meetings. Renaissance is a representative organization that is elected, and there are bi-annual meetings held.

Ms. Snyder asked Mr. Neal if he knew that if any garage apartment in the neighborhood, that is rental property, had been grandfathered in as a rental unit. Mr. Neal answered affirmatively, and stated that the Tulsa Health Association was an exception to the grandfather clause. Tulsa Health Association has properties on the edge of the neighborhood. Mr. Neal stated that to his knowledge there has been no new construction in the neighborhood that has been allowed to be multi-family units.

Amy Thomas, 2603 East 14th Street, Tulsa, OK; stated that she moved into mid-town in 2004. In 2008 she walked past Mr. Anderson's construction and he was in the yard. She stopped to say hello and almost immediately Mr. Anderson told her that he was going to make the garage into two apartments, one upstairs and one downstairs, and turn the house into a duplex. At this point he bragged that he would be able to collect rent on four rental units. When he recognized that Ms. Thomas was surprised by this proclamation he turned and retreated into the house. In 2008 she and her husband had given their approval for a tall ceiling in Mr. Anderson's garage, but not once was the phrase "apartment" displayed in the paperwork. She and her husband intend on retiring in their home and have spent a substantial amount of money on the home for renovations. Ms. Thomas informed the Board that Mr. Anderson's property is not his home. Ms. Thomas asked the Board of Adjustment to protect the value of historic mid-town Tulsa, and her neighborhood as one of Tulsa's finest communities. Ms. Thomas stated that Mr. Anderson has made an illegal investment and has been caught so it is time he accept his self-imposed consequences. Mr. Anderson is not disclosing the problem to interested buyers. He is deceiving the public into thinking the property is a multi-family income property that is legal and it is anything but that. Mr. Anderson has gone door to door requesting Renaissance neighbors to sign a petition on his behalf in hopes of swaying the decision of the Board by showing no one is against the proposed garage apartment on the subject property. Ms. Thomas and her husband refused to sign the petition. Beth Hengler, Mr. Anderson's realtor, is violating disclosure laws by not disclosing the illegal apartment. It is clearly stated in all real estate transactions that anything that is not legal associated with the property must be disclosed. Ms. Thomas stated that she had a copy of Mr. Anderson's disclosure, and that Mr. Anderson answered the number nine question, "Have any additions or alterations been made without required permits?", and Mr. Anderson circled the answer "No" and has signed the disclosure. Ms. Thomas asked the Board members to consider who has the most to lose on the illegal construction.

Rebuttal:

Mr. Anderson came forward and stated he would like to address Mr. Neal's comment about the permits on the subject property. There were permits filed and they were approved by the City of Tulsa. Mr. Anderson stated he purchased the home in 2007 and at that time the previous garage had been razed and was completely gone. This whole episode started when he had a conversation with a neighbor, who also has a garage apartment, about garage apartments. Mr. Anderson stated that he has never

met nor had a conversation with Amy Thomas so he does not understand her comments. The plans he submitted to the City had one apartment in the garage and that is all the plans ever conveyed. There has never been any alteration to the main house in an attempt to turn it into a duplex. Mr. Anderson stated that he had received a call from the City in 2008 claiming that someone had looked into the window of the house, saw construction happening and claimed to the City that the house was being turned into a duplex. The City investigated the allegation, found that it was clearly a falsehood, and dropped the action. He does not understand Ms. Thomas's comments about the garage apartment being built illegally because he obtained permits for the construction.

Mr. Van De Wiele asked Mr. Anderson who drew the plans for his garage apartment that are in the Board's agenda packet on pages 6.9 and 6.10. Mr. Anderson stated that a fellow employee drew up the plans. Mr. Van De Wiele asked Mr. Anderson who performed the construction of the garage and asked if it was a professional contractor, because there is a noticeable lack of indication of effort and that is what may have kept this garage from being deemed a residence in the permit review process. Mr. Anderson stated that the garage apartment is actually a studio because there is no actual bedroom.

Mr. Van De Wiele asked Mr. Anderson why he constructed the garage in two phases. Mr. Anderson stated that he had hoped to complete the construction all in phase but the company he was working for at the time was in a massive layoff so he decided to cut his expenses. So he decided to use the garage as it was constructed at that time and not spend any more money on it at that point in time.

Mr. Van De Wiele asked Mr. Anderson if his builder obtained the permits on the garage or if he had obtained the permits. Mr. Anderson stated that he obtained the building permit and the individual technicians for HVAC, electrical, plumbing, etc. obtained their own permits. The building permit was applied for by him. Mr. Van De Wiele stated there is no mention on the plans that the garage is to be an apartment, so when he took the plans to the Permit Office, was there any discussion about his intentions for the garage or second story. Mr. Anderson stated that he did not remember the conversation but he thought the plans were completely obvious as to his intentions for the building. He metered the building separately, keeping the use from the main house. Mr. Van De Wiele asked Mr. Anderson if the two pages he has before him were the only two pages that were submitted to the Permit Office. Mr. Anderson stated those were not the only two pages that were submitted. There were floor plans, site plans, elevation plans, etc. submitted. Mr. Van De Wiele asked Mr. Anderson if there were any notations on the submitted plans that the building was to be used as an apartment, because everything he reads in his packet states "Anderson garage". Mr. Anderson stated that was true.

Ms. Snyder asked Mr. Anderson if he had submitted a kitchen plan. Mr. Anderson stated that he did not think the plan stated kitchen anywhere on it, but there is a kitchen sink.

Mr. Van De Wiele stated that there may be a kitchen sink noted on the plan but people have a utility sink in a garage. Mr. Van De Wiele stated that he had heard Mr. Anderson state a few times that it was perfectly obvious what he was doing, but he thinks there is a possibility that it was purposely not obvious based on what he had in front of him today. The plans do not necessarily look like an apartment; they could be a laundry facility. Mr. Anderson stated that is possibly true, because he designed the place to be used as either an apartment or a laundry facility.

Ms. Back stated that City staff is present if the Board has any questions regarding this case.

Chuck Lange, Zoning Plans Examiner, City of Tulsa, 1331 South Gary Avenue, Tulsa, OK; stated that the Zoning Clearance Permit was applied for as a garage apartment or second dwelling which is not permitted by Section 207. At that point the applicant was referred to the Board of Adjustment for a variance request, for another single family dwelling on the same lot. The initial building permit was applied for in April 2008. What is presented on the plan review routing slips states "detached garage, new". The information that was completed by the applicant states it is for an accessory building. This application in 2008 was being made as a result of a stop work order from an inspector, because the garage was under construction without a permit. The plan review does show an accessory building with a first and second floor with a total square footage over 1,000 square feet. The building permit that was issued stipulates it was approved for a detached accessory building located in the rear yard of the subject lot. There was no mention of living quarters and there was no approval for single family dwelling unit or living quarters. Mr. Lange stated that page 6.9 in the Board's agenda packet is relatively close to site plan. Mr. Lange then presented the original copy and field copy of the plans that were submitted for the Board's review. Those plans identify the subject building as a proposed garage and there is no mention of a living unit. There appears to be a bathroom and a living area on the plans but there is no kitchen identified. Mr. Lange stated that the plans he presented to the Board today were submitted with the 2008 permit application. Mr. Lange stated that in 2009 there was an application made for a remodel of the subject building. That application would have been reviewed as a remodel of a detached accessory building. It was approved as an addition to an accessory building on the subject property. The plans of the remodel show that the remodel was an addition of a new stairway, new interior walls with the basic floor plan of the original site plan.

Mr. Van De Wiele asked Mr. Lange if there had been a stairway to access the second floor in the original plans. Mr. Lange stated that there was a stairway in the original plan and the remodel for the stairway was to bring it up to code by adding a handrail, which was a result of a Letter of Deficiency being issued. Mr. Lange stated that the two permits that were issued were for a detached garage accessory building and a remodel of the accessory building.

Mr. Van De Wiele asked Mr. Lange if in the general plan review process if there is a discussion of how the building is being used. Mr. Lange stated that policy is for a reviewer to look for the three elements which are a kitchen, a bathroom, and a living area. Another variable that is reviewed is whether it is to be used as a rental property or the use of the family in the primary residence.

Paul Enix, Senior Code Official in Building Review, City of Tulsa, 175 East 2nd Street, Tulsa, OK; stated the definition of a dwelling unit refers to the kitchen, the bath, and the sleeping area. If the reviewer locates those three items on a set of plans then a discussion is entered into about the fourth element which is the independent living. The dependent living is classified as a mother-in-law living on the property under the care of the family in the primary house. Then there is independent living, which is the applicant's situation, which is an apartment where a person lives as an independent. In this subject case that discussion never progressed to that point because there was no kitchen on the plans, meaning there is no stove or anything to cook with. The office does not want to question everything that a person is attempting to do because that would be upsetting to the public. So what the office attempts to do is look at the plans presented. If all the elements are displayed then the determination is made if it is dependent or independent living by a conversation with the applicant.

Mr. Anderson came forward and did not dispute anything that the City of Tulsa presented. He admitted that he made the assumption that it was obvious that the subject building was to be an apartment. The opposition of the neighborhood is not as big an ordeal as was presented by Mr. Neal and Ms. Thomas, because he does have a petition that was signed by everyone that is directly around his house and he does not see the opposition. As for the site plans being slightly different, as he was building he would make changes, i.e., the moving of a wall. The plans are the same in principle with different dimensions.

Mr. Van De Wiele asked Mr. Anderson where his tenant parked. Mr. Anderson stated that the tenant typically parked in the street. The tenant has one car and does have access to the driveway, and occasionally the tenant parks in the driveway.

Comments and Questions:

None.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 4-0-0 (Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstenting"; Henke absent) to **DENY** the request for a **Variance** to permit a second dwelling in an RS-3 district to permit a garage apartment (Section 207) finding a lack of a hardship; for the following property:

LT 3 BLK 3, CITY VIEW HILL ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

17113-A—Jack Bubenik – City of Tulsa Parks

Action Requested:

Modification to previously approved site plan (BOA-17113) to convert existing pool facility to a community garden. **LOCATION:** 3981 West 41st Street South **(CD 2)**

Presentation:

Jack Bubenik, Tulsa Parks, City of Tulsa, 175 East 2nd Street, Tulsa, OK; stated that Tulsa Parks would like to remove the pump house for the pool and convert a dilapidated pool, that has been closed for ten years, to a community garden. The OSU Extension Office has embraced and sponsored this idea, and they will mentor the neighborhood regarding the community garden. The City has spoken with Robertson Elementary Park, Clinton, Webster High School, Trinity Baptist Church, and Red Fork Baptist Church and all of these people are in support of this project.

Interested Parties:

Eric Sanchez, 3991 West 41st Street, Tulsa, OK; stated he lives next to the west border of the entire park. He is disconcerted by the lack of communication from anyone regarding these plans. Mr. Sanchez stated that he had just received the notice from INCOG Thursday, the 18th, so this is the first he has heard about the proposed plans. He has some concerns. Mr. Sanchez wanted to know if the park curfew hours were going to be changed, will the lighting be changed, or will the security of the area be affected. Mr. Sanchez stated that the park has not been a good neighbor. For example, about four years ago he came home to discover City of Tulsa workers tearing down his fence along the west side. He attempted to stop the workers but no one would listen. The same workers removed all of his screening vegetation he was using to screen the park activity from his property. Mr. Sanchez is concerned about who will defend the garden from the multitude of animals that live in the wooded area of the park. He is also concerned about the park reverting back to a dilapidated and neglected park because the wild animals will keep decimating the garden. He asked who is going to guarantee that this adventure will move forward and be maintained.

Richard Bedford, 3715 West 41st Street, Tulsa, OK; stated he owns the land on the east side of the park, and his house will be within 50 feet of the proposed garden. The pool was closed because the City did not have the funds to hire a lifeguard. Mr. Bedford asked how much land will be used for the proposed garden and how much will the demolition cost. Mr. Bedford wanted to know if the City, or someone, was going to install a fence to keep people off his property.

Mr. Van De Wiele asked Mr. Bedford if he currently had a fence on his property to separate his land from the park. Mr. Bedford stated that he has a privacy fence on part of the property, but his land extends 1,300 feet north and the park is 20 acres. And his property is in the County and the park is located in the City.

Mr. Bedford stated that the only communication he has had regarding this project is the letter he received from INCOG about week ago. He would like to have more information on the proposed project.

Rebuttal:

Jack Bubenik came forward and stated that curfew will not change in the park. Lighting of the area will not change in the park. The fence line will stay the same. There is an existing eight foot cyclone chain link fence around the old pool and it will remain. That fence will come down temporarily during the demo work but it will be reinstalled immediately. The City is concerned about the existing empty pool being a safety and health issue, and filling it with dirt is a much better use of the area. The footprint of the pool will be the proposed garden. Some of the pool decking will be removed and flagstone will be installed to replace the removed decking. There are two existing buildings; one of them has two restrooms and a storage area, and one of those restrooms will be converted to a unisex restroom while the rest of the building will be converted to storage for the Master Gardeners. The large outdoor area connected to that building will be used as an outdoor classroom space. Mr. Bubenik stated there will be some cost incurred by the Parks Department due to the demolition, and the Parks Department will be incurring the cost of the flagstone and removing the decking. In regards to the growing medium used to fill the pool, and the other expenses associated with the garden, the Master Gardeners will be incurring that expense; it will not be the City of Tulsa. In regards to the comment about the guarantee of maintaining the garden, the City feels that with the Master Gardeners, the churches and the schools supporting the project will be very successful.

Comments and Questions:

None.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 4-0-0 (Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Henke absent) to **APPROVE** the request for a **Modification** to previously approved site plan (BOA-17113) to convert existing pool facility to a community garden, subject to conceptual site plan on page 7.7. The Board approves this modification to the previously approved site plan for a special exception permitting a park to be located in an AG zoned district. The Board is approving the conceptual site plan submitted with no further Board of Adjustment approval required, finding the proposed improvements to be compatible with the neighborhood; for the following property:

W/2 E/2 SW SE & E/2 W/2 SW SE SEC 21 19 12, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21484—Kirk Von Harlton

Action Requested:

Variance of the required side yard setback from 15 feet to 8.8 feet in the RS-2 zone (Section 403.A.5). **LOCATION:** 2848 East 27th Street South **(CD 4)**

Mr. White recused himself and left the meeting at 2:22 P.M.

Presentation:

Kirk Harlton, 2848 East 27th Street, Tulsa, OK; no presentation was made but Mr. Harlton was available for any questions.

Interested Parties:

There were no interested parties present.

Comments and Questions:

Mr. Van De Wiele stated that there are other corner lots in the neighborhood that have a similar situation so this would not be out of character.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 3-0-1 (Snyder, Tidwell, Van De Wiele, "aye"; no "nays"; White "abstaining"; Henke absent) to **APPROVE** the request for a Variance of the required side yard setback from 15 feet to 8.8 feet in the RS-2 zone (Section 403.A.5). The Board has found that the proposed addition is not out of character with other corner lots in the neighborhood; subject to conceptual site plan on page 8.8. Having found that by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

LT 1 BLK 1, OLDHAM HEIGHTS ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

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

21486—Claude Neon Federal Signs – Ed Horkey

Action Requested:

Variance to allow an electronic message center within 200 feet of residentially zoned property (Section 1221.C.2.c). **LOCATION:** 1671 East 71st Street South (CD 2)

Presentation:

Ed Horkey, Claude Neon Federal Signs, 1225 North Lansing, Tulsa, OK; stated he represents the client, MCI Diagnostic Center. The subject property is surrounded on three sides by OL, OM and commercial zoning. The 200 foot separation is essentially from the current sign location on the subject property to the west. The closest RS-3 zoned property is on the west side and that is actually Joe Creek. The opposite side of Joe Creek is another residentially zoned property and it is an apartment complex that is located in a RM-1 zone. The apartment complex is 367 feet from the subject sign to the point of beginning on the apartment complex property. There is an existing 25'-0" sign pole that is being refurbished. In placing the electronic message center on the sign the top sign section will be removed, raising the sign that is third from the bottom to the top, and placing the electronic message center in third from the bottom position. The actual size and overall height of the sign will not change. The final display for the electronic message center has not been chosen at this time, but the sign does have the ability to have a ten-second video displayed. In discussions with the owner the sign is to be used to advertise the medical services that are offered by MCI Diagnostic Center. MCI Diagnostic Center performs medical testing as a private facility, and their interest is in having the public recognize the different types of test that are offered on site. An electronic message center tends to be more about advertising words, where a digital board tends to be more about images and video. This sign will have an electronic message center where the use will be advertising words with a possible photograph displayed.

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 (Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Henke absent) to **APPROVE** the request for a Variance to allow an electronic message center within 200 feet of residentially zoned property (Section 1221.C.2.c). Finding that the residentially zoned property, which necessitates this variance, is in fact Joe Creek creekway and is not used as residential and likely never will be. This approval will be subject to per plan on page 10.11 for the height and dimensions. 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 SECR TH W5 FT NE7.07 S5 FT POB BLK 1, LAURENWOOD, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21487—Bill Powers

Action Requested:

Variance of the required rear yard from 25'-0" to 9'-0" in an RS-2 district to permit an addition (Section 403). **LOCATION:** 2738 East 25th Street South **(CD 4)**

Presentation:

Bill Powers, 8810 South Yale Avenue, Suite D, Tulsa, OK; stated he is before the Board of Adjustment on behalf of the owners. This property is proposed for an extensive renovation which includes an addition at the rear of the property. The original structure is encroaching because the house was built before the zoning code. Mr. Powers stated that the hardship is that the owners have lived in the house for 30 years and do not want to move. The owners have found that they can renovate this house for less than the expense of moving and purchasing a large home.

Mr. Van De Wiele asked Mr. Powers if the existing garage was being turned into living space and with a new garage added. Mr. Powers stated that the existing two-car garage will remain and a third car bay will be added with a three-car driveway. The owners have a photography business and want to store their equipment and trailer in the third bay. There will also be a second story added above the three-car garage.

Mr. Van De Wiele asked Mr. Powers to explain the hardship for the property. Mr. Powers stated that the family wants to stay in the home. They want to avoid realtor fees and the cost of buying a new home. Mr. Van De Wiele stated that the Board cannot consider a financial hardship. Mr. Powers stated that the house was built in the 1940s, is non-conforming and the enforcement of the code would be a hardship.

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 (Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Henke absent) to **APPROVE** the request for a Variance of the required rear yard from 25'-0" to 9'-0" in an RS-2 district to permit an addition (Section 403), subject to conceptual plan on page 11.7. Having found that this

1940s era home was built before the code went into effect, and the unique orientation of the home on the corner lot poses a hardship justifying the approval of the variance. 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-BL2, LOUISE ADDN OF L1 J P HARTERS SUB, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21488—Mark Bragg

Action Requested:

Variance to allow a wall sign in a Residential District (Section 402.B.4). **LOCATION:**
2601 East 81st Street (CD 2)

Presentation:

Mark Bragg, KSQ Architects, 1624 South Detroit, Tulsa, OK; stated Oral Roberts University had remodeled the subject building and would like to have a building sign honoring the donor. The sign will be on the southwest face of the subject building and will not be illuminated.

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 (Snyder, Tidwell, Van De Wiele, White “aye”; no “nays”; no “abstentions”; Henke absent) to **APPROVE** the request for a Variance to allow a wall sign in a Residential District (Section 402.B.4), subject to site plan on pages 12.10, 12.11 and 12.12. Finding that for identification and location purposes the university sign is necessary. 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:

**BLK 1 LESS BEG SWC TH N22 SE31.19 W22 POB, ORAL ROBERTS UNIVERSITY
HGTS, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

21489—Mark Bragg

Action Requested:

Variance to increase the permitted floor area from 1,006 square feet (40%) to 1,188 square feet (47%) (Section 402.B.1.d); Variance of the accessory building height and coverage area in required rear yard from 1 story to 2 story and increase maximum covered area in the rear yard from 300 square feet (30%) to 540 square feet (54%) (Section 210.B.5.a) in the RS-3 District. **LOCATION:** 1621 South Detroit Avenue East **(CD 4)**

Presentation:

Mark Bragg, KSQ Architects, 1624 South Detroit, Tulsa, OK; stated he lives across the street from the subject property and has lived there for four years. When he first moved into the neighborhood it was entirely rental property and over the years the neighborhood has vastly improved. In the interim the neighborhood has achieved historic zoning. He purchased the subject property across the street because he wanted to downsize without moving out of the neighborhood. Currently the house does not have a garage, but it did have at one time. Mr. Bragg would like to replace the previous garage with another larger garage, larger than what the zoning code allows. The foundation of the previous garage still exists. Mr. Bragg has a letter from the previous owner stating that when she moved into the house the garage had burned down, and that the previous garage had been a two-story garage. Mr. Bragg has support of his application from 17 of his neighbors.

Mr. Van De Wiele asked Mr. Bragg if the footprint of what he was proposing to build is the same as the previous garage. Mr. Bragg stated it is basically the same but not exactly. The new garage will be a little wider to accommodate today's cars.

Mr. White asked Mr. Bragg if he had received his Certificate of Appropriateness. Mr. Bragg stated that he had been approved and does have a Certificate of Appropriateness. Mr. Bragg stated that he also has a Certificate of Appropriateness for the house.

Mr. Van De Wiele asked Mr. Bragg if he intended for the second story of the garage to be a future garage apartment. Mr. Bragg stated that he had no intentions of using the second story as a garage apartment at this time, but he will file an application and come back before the Board to ask permission if he wants to have a rental unit.

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 (Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Henke absent) to **APPROVE** the request for a Variance to increase the permitted floor area from 1,006 square feet (40%) to 1,188 square feet (47%) (Section 402.B.1.d); Variance of the accessory building height and coverage area in required rear yard from 1 story to 2 story and increase maximum covered area in the rear yard from 300 square feet (30%) to 540 square feet (54%) (Section 210.B.5.a) in the RS-3 District, subject to conceptual plan on page 13.10. Finding that the garage to be constructed is basically a reconstruction of a pre-existing garage that had burned down with the footprint being roughly equivalent to that which had been there previously; modified to today's living standards. This approval is subject to the further requirement that the second floor of the garage will not be used for rental property unless future permission is approved through the Board of Adjustment process. 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 7 BLK 5, MAPLE PARK ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21490—Lou Reynolds

Action Requested:

Variance of the parking requirement from 15 spaces to 8 spaces to permit a restaurant (Section 1212.D). **LOCATION:** 3629 South Peoria Avenue East (**CD 9**)

Mr. Tidwell recused himself and left the meeting at 3:02 P.M.

Presentation:

Lou Reynolds, 2727 East 21st Street, Tulsa, OK; stated the property is located on the southeast corner of East 36th Place and South Peoria. The owner has a parking agreement with the church that is located north of the subject property. The subject property is a 1930s building that has had multi-tenant uses. The area that is to be used previously had a Use Unit 14 use and had a requirement of one parking space to 225,

and that was grandfathered in. To convert the space to a restaurant and Use Unit 12 fifteen parking spaces would be required. Mr. Reynolds is asking the Board to allow the continuance of the grandfathered type commercial use with a variance from the eight parking spaces to fifteen parking spaces. The neighbor on the east side has written a letter of support of the proposed project. Mr. Reynolds submitted a new site plan to the Board for review, and tagged it as Exhibit 14.11-A showing modifications to the building and an increased number of parking spaces. The hardship is the 1930s structure. The total site is underparked but there is a parking agreement from the neighbor on the north side. Also, on the new site plan submitted today, the traffic flow has been reconfigured. Originally the traffic flow was to the south toward Peoria Avenue, and the new traffic flow configuration is reversed to have traffic move toward the church parking lot.

Interested Parties:

Leroy Welborn, 3647 South Peoria Avenue, Tulsa, OK; stated he has property directly south of the subject property. He understands and is convinced that the proposed parking will be sufficient to handle the restaurant flow, but he has not heard how large the proposed restaurant will be.

Mr. Van De Wiele asked Ms. Back how many parking spaces are legally required by the restaurant. Ms. Back stated she would research the section in the code book quickly, but that Mr. Reynolds client is abiding by what is required by the code and that is why Mr. Reynolds is before the Board requesting a variance. The parking spaces that were grandfathered in and by increasing the square footage is the reason for the variance. Mr. Reynolds also has a shared parking agreement with the church to meet the overflow parking.

Mr. Welborn stated that he is convinced that he will not have overflow traffic on or around his property, and that was his only concern.

Mr. Reynolds came forward and stated that if the subject building were brand new the code would require 39 parking spaces. The former site to the north has 1,800 square feet that has been a restaurant, known as Elliott's B-B-Q, and they are grandfathered in as a restaurant for many years. To address the effect of the subject expanded restaurant use, the client has asked for a variance for it, and has found parking off site and directed that parking away from the neighbor's business.

Mr. Van De Wiele asked Mr. Reynolds if there would be a sign on the property for traffic directions. Mr. Reynolds stated there would be a sign on the back of the property.

Comments and Questions:

None.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 3-0-1 (Snyder, Van De Wiele, White "aye"; no "nays"; Tidwell "abstaining"; Henke absent) to **APPROVE** the request for a

Variance of the parking requirement from 15 spaces to 8 spaces to permit a restaurant (Section 1212.D), subject to conceptual site plan 14.11-A that was submitted today, October 23, 2012. The Board has found that this 1930s structure was constructed, as typical, undersized for parking but that the applicant has obtained a parking agreement with the church property owner to the north which should for adequate overflow parking. By that reason this is 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:

LTS 1 & 2, BROACH ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

Mr. Tidwell re-entered the meeting at 3:13 P.M.

UNFINISHED 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'-0" x 20'-0" to 19'-0" x 30'-0" (Section 210.B.10.a). **LOCATION:** 5136 South Troost Avenue East **(CD 9)**

Presentation:

The applicant was still not in attendance.

Mr. Van De Wiele asked Ms. Back if he was correct in understanding the reason this case had been previously continued to this hearing was for a city encroachment. Ms. Back stated that is correct. It is her understanding that not only is the carport longer than what is allowed in the front yard but it actually encroaches approximately three feet into the City's right-of-way.

Mr. Van De Wiele asked Ms. Back if she knew whether that situation had been remedied with the City or granted any permission. Ms. Back stated that information has been given to staff as of today, and she was anticipating that the applicant would supply that information before the case report was written. Ms. Back stated that as of today, October 23, 2012, she has not heard from the applicant.

Mr. Van De Wiele asked Ms. Back when this case first appeared on the Board of Adjustment agenda. Ms. Back stated that the application was originally submitted on June 18, 2012 to be heard at the August 14, 2012 Board of Adjustment meeting. The case was continued for a couple of hearings to allow the applicant enough time to get the agreement from the City, because it would take six to seven weeks to get the permission from the City.

Interested Parties:

There were no interested parties present.

Comments and Questions:

Mr. White asked Mr. Swiney, Legal Staff, for his opinion on this case. Mr. Swiney stated that he drafts license agreements all the time, in cases like this. Legally there is no objection to the Board taking action today. In his opinion he thinks it would be better to continue this case to the next Board of Adjustment agenda, because there might a very good reason why the applicant is not in attendance today.

Mr. Van De Wiele asked Ms. Back to inform the applicant that if there has been nothing done as far as a license agreement, the Board will be inclined to move forward on the application. Mr. Van De Wiele stated he will agree today to continue this case to the next hearing.

Board Action:

On **MOTION** of **TIDWELL**, the Board voted 4-0-0 (Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Henke 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'-0" x 20'-0" to 19'-0" x 30'-0" (Section 210.B.10.a) to the Board of Adjustment hearing on November 13, 2012; for the following property:

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

OTHER BUSINESS

Request for Tulsa Zoning Code Interpretation:

- A. Where, and when, is serving and sale of intoxicating beverages and/or low point beer allowed as accessory or customary to an identified use?
- B. What specific factors are germane to make that determination?
- C. Would such decisions (A and B above) always require Board of Adjustment determination, or would City of Tulsa code officials be authorized to make the determination?
- D. If City of Tulsa code officials are not authorized to make a determination, please provide interpretation of Tulsa Zoning Code whether selling or serving intoxicating beverages and/or low point beer as an accessory use is approved; or approved with conditions; or not approved, for: Community Centers / Cultural Centers / "Event Centers" / Exhibition Hall / Convention Hall / Nail Salon / Barber Shop / Beauty Shop.

Presentation:

Paul Enix, Senior Code Official in Building Plan Review, City of Tulsa, 175 East 2nd Street, Tulsa, OK; stated he would like to present some background information and an explanation as to why the interpretation request is before the Board. Both the Alcoholic Beverage Laws Enforcement Commission (A.B.L.E. Commission) and the City of Tulsa Licensing require, by ordinance for the City, verification of zoning compliance before a license to sell or serve either alcohol or low point beer can be issued. Mr. Enix presented a list of where intoxicating beverages and/or low point beer can or cannot be sold or served for consumption on the premises based on the Tulsa Zoning Code text. Also, on this same list are uses that Plan Review staff has historically approved for the sale or serving of intoxicating beverages customarily incidental and subordinates to the principal use, and a list of uses where customers have requested approval for the sale or serving of intoxicating beverages for consumption on premises. The first section of the list covered uses where intoxicating beverages or low point beer can be sold or served for consumption on premises based on the Tulsa Zoning Code. The second section of the list covered uses where intoxicating beverages or low point beer cannot be sold or served for consumption on premises based on the Tulsa Zoning Code. The third section of the list covered uses staff has historically approved the sale or serving of intoxicating beverages or low point beer for consumption on premises, because they are customarily incidental and subordinate to the principal use. The fourth section of the list covered uses where customers have requested approval for the sale or serving of intoxicating beverages or low point beer for consumption on premises. The fourth section of the list are uses that raise the most questions for City staff, i.e., an Art Gallery, Nail Salon or the Community/Event Centers. Mr. Enix has spoke with the A.B.L.E. Commission and they, too, do not have the answers because some of the venues that are now serving intoxicating beverages or low point beer are so new to the market.

Ms. Snyder asked Mr. Enix if the places such as the candy store or nail salon have a license from the A.B.L.E. Commission. Mr. Enix stated no because before A.B.L.E. will provide them with a license they require zoning code approval.

Ms. Snyder asked Mr. Enix if the City is asking the Board of Adjustment to say it is okay for the zoning code staff to approve the sell or consumption of alcohol or low point beer on premises if the customer has a license, or it is okay to sell or consume alcohol on premises without a license.

The City staff is only talking about what the Zoning Code will permit. If it is an intoxicating beverage as defined by the A.B.L.E. Commission, whether the customer obtains a license is decided by the A.B.L.E. Commission not a decision made City staff.

Mr. Van De Wiele asked Mr. Enix to confirm whether he was understanding what Mr. Enix was saying. Mr. Van De Wiele understood Mr. Enix to say that if a person owns an art gallery and wants to sell wine, that person must have a license that has been issued by the A.B.L.E. Commission and have a zoning clearance from the City of Tulsa stating that the art gallery is operating per the zoning code. Mr. Enix answered affirmatively and stated that it will actually be displayed on the Certificate of Occupancy, and what is required by the A.B.L.E. Commission is a Certificate of Compliance. Mr. Van De Wiele stated that this interpretation request is before the Board because the art gallery wants to sell wine and it is not clear in the zoning code that the art gallery can sell the wine, so the City cannot issue the zoning clearance permit. Mr. Enix stated that is correct. Mr. Van De Wiele then asked Mr. Enix if the art gallery were to be approved for a variance as part of the business, then would the City be cleared to issue the zoning permit. Mr. Enix stated that is part of the City staff's question and that is why there is an interpretation request.

Mr. White stated that he understands the evolution of things, and he can understand socially how this came about, but how can the City staff get from accessory, to customary, to accepted norms, then to principle use legally. Mr. Enix stated that as long as he can remember a person has always been allowed to buy a drink in bowling alley so he does not know how that came about. But the City is witnessing, right now, the same evolution trying to occur with the nail salon, hair salon, barber shop, etc. The City sees it happening and the A.B.L.E. Commission knows it is happening and they are attempting to get it under control. This is happening in a way that is a little sneaky, and the owners are telling their clients to bring in their own beverage. Under that guise, the A.B.L.E. Commission tells the nail salon that they are still serving an intoxicating beverage or low point beer, so at what point is it said that is customarily and incidental to the operation.

Mr. White stated that he did think the Board would be able to resolve this question in today's meeting, and stated that Mr. Swiney has suggested the formation of a committee. Mr. White stated that he thinks a group of knowledgeable people of different aspects need to get together to reach a resolution, because there are quite a number of aspects involved.

Mr. Enix stated that the City staff was concerned that the question was too large a question. City staff started out by trying to figure out how to approach the question, and they attempted to handle through the immediate problem of the nail salon or barber shop use. But to encompass the entire question presents the dilemma. The City would ask that the Board does not table the whole request for interpretation but to give them something they can work with, like the Use Unit 13.

Mr. Van De Wiele stated his thoughts would be for the City not to issue the zoning clearance. The client is providing, selling or giving wine at the nail salon so they would need to file an application for a variance and then the Board of Adjustment would have the ability to look at each case individually. At that point the Board would decide that it is customary or accessory to the business use.

Mr. Enix stated that what happens now is a client comes to the City for a Certificate of Occupancy authorizing the client to operate a hair salon. Then the client would approach the licensing department for a Certificate of Compliance to take to the A.B.L.E. Commission. The Licensing Department sends the client to his department to receive the necessary stamp on the Certificate of Occupancy so they can obtain the necessary letter to go to the A.B.L.E. Commission. At that point, Mr. Enix will tell the client that he cannot issue the necessary stamp because there is no language in the code that permits it. The client then has a response of "it's being done all over town", and Mr. Enix tells the client it may be done all over town but it is not being done legally anywhere in town.

Mr. Van De Wiele asked Mr. Enix where the language is that states "accessory". Mr. Enix stated the definition of accessory, i.e., Section 702 under the commercial district, it states in Section 702 and 702.A "accessory use is permitted in commercial districts ... accessory use is customarily and incidental to a principle use permitted in a commercial district or permitted in such districts".

Mr. Van De Wiele asked where is it stipulated that alcohol can be served if it is accessory. Mr. Swiney stated that in Use Unit 19, Section 1219, page 12-39 there is a list of uses. In that listing is hotel/motel with an asterisk, and the asterisk denotes "an accessory use bar which is customarily incidental and subordinate to a principle use". A hotel/motel is included in this use. Mr. Swiney stated that when he first saw the request for interpretation it seemed to him that it was no more complicated than getting the asterisk to apply to other uses.

Mr. White asked Mr. Enix how other metropolitan areas the size of Tulsa handle similar issues. Mr. Enix stated that he had asked a client with a business near 106th Street and South Memorial, that came to the City, if the client knew how Bixby was issuing permits. Mr. Enix stated he did not know how Bixby was issuing the permits.

Lou Reynolds, 2727 East 21st Street, Tulsa, OK; came forward and stated that he has seen this in other communities, and there is an alcohol overlay over the entire district.

That would allow alcohol use in the district. Similar to the asterisk Mr. Swiney referred to, there is an overlay that signifies it is appropriate in the commercial district.

Ms. Susan Miller stated that Mr. Reynolds is referring to a zoning overlay, so it is another layer of zoning designation and it can be really complicated.

Mr. Reynolds stated that the Warren Theatres will be opening in Broken Arrow soon, and they intend to serve dinner and mixed drinks. Mr. Enix stated that the alcohol will not be allowed in the seating area but it will be allowed in a lobby type area.

Ms. Susan Miller stated that Oklahoma City has the overlay similar to what Mr. Reynolds referred to. For instance, Bricktown, has the Alcohol Beverage Consumption (ABC) overlay. However, the ABC overlays property by property, so it can be really complicated and the process is very cumbersome. Ms. Miller thinks the general approach of the Tulsa code makes more sense. There is a code re-write currently being performed with a projection date for the first draft in the spring of 2013. This issue could be cleaned up and be proposed as becoming part of the new code.

Mr. Swiney asked Mr. Enix if an owner of a bowling alley came to his department and stated that he would like to have a bar in the bowling alley, would he be turned away simply because there is nothing in the code that states your department does not have the power to allow it. Mr. Enix stated that at this point the bowling alley owner would not be turned away because there is not a reasoning to turn him away. How could his department show favoritism by allowing all other bowling alleys in town serve alcohol.

Mr. Van De Wiele asked where in the code does it state that if the permitting official deems it is customary or incidental that the zoning clearance can be given. Mr. Enix stated that is why City staff is before the Board of Adjustment. Mr. Van De Wiele stated that if it is not allowed by right then the client must come before the Board to ask for it.

Mr. Swiney thinks this may be nothing more difficult than simply putting into the zoning code the ability of the Board of Adjustment to grant a special exception to have a bar in the bowling alley, barber shop, or whatever the business is. Currently the zoning code does not give the Board that power. Mr. Enix agreed with Mr. Swiney, but he wants to know how he argue it is not customary, incidental and subordinate also.

Yuen Ho, City of Tulsa, 175 East 2nd Street, Tulsa, OK; stated that the code states if the City is to err it is to err on the side of the applicant.

Mr. Van De Wiele asked where in the code does it state that the permit office has the discretion to say if it is customary it can be allowed, that is the step he is missing. Mr. Swiney stated that staff is saying it is customary but it does not state in the code that it is customary. Mr. Van De Wiele stated that there is nothing in the code that states if it is customary then the zoning official can give a pass. Mr. Enix stated that it does state that in Section 702.A.

Mr. Reynolds came forward and says the code just simply states "the law". The law says everything that is customary and incidental for a client to comply with the code.

Mr. Swiney stated that the idea is if it is customarily incidental in fact, then it can be permitted and that is how City staff has been operating. Mr. Enix stated that was correct, so how can his office deny it.

Mr. White asked Mr. Enix how his office makes the determination that it is customarily incidental. Mr. Enix stated that is when the case is brought to the Board of Adjustment.

Mr. Swiney stated that Mr. Ho had said his office does not have the power to grant the alcohol use in Use Unit 19, except for a hotel/motel listing that has the asterisk. Mr. Ho affirmed Mr. Swiney's statement.

Mr. Van De Wiele stated if the nail salon, barber shop, beauty saloon, etc., are new uses, from the relatively recent past, doesn't that cut against it being something that is customarily incidental? Mr. Enix stated yes, until a person gets into the question of how does a use become a custom?

Mr. White stated that he would like to see the permit office be given the latitude to make the determination of this nature, because he does not think the Board of Adjustment is the place.

Ms. Snyder asked Mr. Enix how the grocery stores are handled. Mr. Enix stated that the grocery store has permission to sell low point beer for off premis consumption, which is a stamp that is placed on the Certificate of Occupancy so they may obtain the license.

Mr. White asked Mr. Enix what can the Board do to start solving the problem for his office. Mr. Enix stated that his office does not feel they are giving good customer service when a client with a hair salon comes in and are told that the black and white of the situation is that a fee can be paid to the Board of Adjustment and take their chances. The client's comment is then, "I have to pay that much to have them listen to what I want to do?" How can the permit office serve these people, provide them with an answer that does not involve them spending the amount of money required to ask the Board of Adjustment for a special exception? City staff has approved bowling alleys because there is no way argue against it being customary. It is the hair salons. The City knows there will be a question coming soon in regards to an event center where they want to make the money themselves instead of a caterer making the money from the sale of drinks.

Mr. White asked Mr. Swiney what can the Board do to implement the authority being given to City staff to make a determination of this sort without needing to come before the Board of Adjustment, other than for spacing verifications.

Mr. Van De Wiele asked what the City staff was doing different than what is described in Section 702.A of the code. His thought is if the City staff is unsure then the client needs to come before the Board of Adjustment for a special exception.

Mr. Swiney thinks Mr. Van De Wiele's idea would be fair. If the Board of Adjustment says they would like for staff to have the power to make the call in-house that would give staff the comfort level required. A.B.L.E. would not object. The users would not object.

Mr. Enix explained more about the A.B.L.E. Commission. The A.B.L.E. Commission has a set of rules that are stringent. It is only permitted to be accessory use, not the principle use so there can be a refrigerator in the rear of the business and the owner of the business can serve wine from that refrigerator. When there is a bar it is different. That depends on where the money is being made. If more money is being made from the wine than cutting hair that changes everything. The A.B.L.E. Commission does not let things run wild, they regulate it as an accessory use by looking at the tax receipts and watch it very closely.

Ms. Back asked Mr. Enix if the spacing verifications would still be place for the accessory uses, i.e., Pinot's Palate on Cherry Street. Mr. Enix stated no. Pinot's Palate is considered to be a bar by the City and that is why it had to have a spacing verification. It was not an accessory use. Ms. Back stated that she wants the Board to understand that if an establishment is classified as a bar, then the business must traverse the entire process. Mr. Enix stated that the only way Pinot's Palate could be approved was to classify it as a bar, and that brings this back to the question.

Mr. Swiney stated that an event center that wants to sell beer is an accessory use, it has not turned into a bar. The art school that was declared to be a bar was given that status to give them what needed. It is obvious that the wine service was not the principle use, it is an art school and the wine is accessory. This was a way of abiding by the law to get them what they needed. He has faith in staff's ability to determine whether a request is an accessory use, and if they should have a question they will come before the Board of Adjustment.

Mr. Van De Wiele asked Mr. Swiney that when he states "they" does he mean staff will be before the Board for a determination or is the applicant appearing before the Board. Mr. Swiney stated he was thinking of the applicant appearing before the Board of Adjustment, but staff appearing before the Board for guidance is also an option.

Mr. Van De Wiele, again, asked is that process that Mr. Swiney just described different than what is going on today? If it is different, how is it different and why is it needed?

Mr. Enix stated it is because of the change happening in today's market. Using the bowling alley as an example, no one can remember when a drink could not be purchased at a bowling alley, but the purchasing of a drink in a bowling alley started at some point in time. Was it customarily incidental when it started? No, not the first time.

How about the second time a drink was purchased in a bowling alley. At what point is it determined that is customarily incidental. Before the staff makes that determination they want an interpretation. They want to know if the Board has criteria they want to use to make this interpretation. How does the Board want staff to look at this part of the zoning code to enforce it the way it was intended.

Mr. Van De Wiele inquired if a long standing unlawful use is now legally customarily incidental use. Mr. Enix asked how to argue the bowling alley. Mr. Van De Wiele stated that started at some time before the code. If a client wants to sell alcoholic beverages at a candy store then come before the Board and present the case for a determination.

Mr. Swiney agrees with Mr. Van De Wiele, but staff should be the gatekeeper of the question. If they have a case that is questionable then have the client or city staff appear before the Board of Adjustment for a determination. The only other alternative is to change the code giving staff the power to make a determination.

Mr. Van De Wiele asked who was drafting the new code. Ms. Miller stated the City of Tulsa Planning Department is working with a consultant, and INCOG is on the committee that is reviewing the new code draft. Mr. Van De Wiele asked if it would be appropriate to charge the Planning Department staff and the consultant to inform the Board of Adjustment that as of the date of the new amendments what alcohol uses in the City of Tulsa have now become customary and incidental.

Mr. Ho stated that the City has asked the consultant for this consideration, but under contract there is a timeline to produce the new code so he does not think it will happen quickly. The new code must also go before the City Council for adoption. If the phrase "customarily incidental to" is taken away can the City consider the action to be accessory use? If a nail salon offers a drink to a customer, that drink is not a primary source of income which makes it incidental to. But businesses start offering that drink long enough, it becomes the accepted norm or customary. That is where it is staff's responsibility, or the Board's responsibility, to decide how far it is to be taken.

Mr. Reynolds came forward and stated that using the bowling alley as an example is a bad example, because people that are older than the code know that a person could not legally get liquor by the drink in the State of Oklahoma when the code was passed in 1970. All the bowling alleys in existence before the code were as illegal as the dice game in the alley. Mr. Van De Wiele stated that at some point time the bowling alley received permission from the City of Tulsa and the zoning code makes them an incidental use.

Mr. Swiney stated that if the City and the Board does not want to wait a year for the new code, then a single change to one ordinance could be drafted giving the Board of Adjustment power by special exception to grant accessory incidental use.

Mr. Van De Wiele asked if the change that needs to be made simply by broadening Section 702.A?

Mr. Enix stated that he is not worried about this being abused because there is governmental control which is the A.B.L.E. Commission. They watch the dollars and cents that is being made by a business. The Treasury Department and the A.B.L.E. Commission work hand in hand, and it is defined by them as an accessory.

Mr. Van De Wiele asked what zoning text the Board is being asked to interpret. Mr. Swiney stated the text would be Section 702.A. Ms. Back stated that it could also include Section 602.A or Section 502.A. Mr. Van De Wiele asked if the interpretation was just for the commercial district. Mr. Enix stated that the interpretation would be primarily for the commercial district but it could vary.

Ms. Back stated that there has been a lot of discussion on the cost for a variance application, and the variance alone is \$500.00. On top of that charge are the charges for the newspaper advertisement, the notification mailings for the property owners within a 300 foot radius of a proposed project, so an upstart business would have a cost of \$650.00 or higher.

Mr. Swiney recommended that the Board of Adjustment allow staff to use their discretion in the issuing of permits and certificates of occupancy. Being mindful that any user that wishes to sell or serve alcoholic beverages or low point beer on premises as an incidental use is nevertheless subject to guidance and regulation by the A.B.L.E. Commission. Also, understanding that if staff has a question that they, in their discretion, cannot answer staff will appear before the Board of Adjustment for further guidance.

Mr. Van De Wiele stated that he believes that staff already has that authority, and he does not understand why it is now being said that you have that which you already had and that is what has already been done.

Mr. Swiney answered Mr. Van De Wiele's statement by saying it is due to the fact that staff finds themselves in an uncomfortable position and they are looking to the Board of Adjustment for guidance in this area. It is perfectly appropriate for the Board of Adjustment to give them the guidance.

Mr. Van De Wiele stated that he does not want to approve however many years worth of unlawful behavior, to now say that is customarily incidental. He does not see the point of interpreting text in a way that he has heard already to be done. He does not think the Board is doing anything that is not already in place.

Comments and Questions:

None.

Board Action:

On **MOTION** of **TIDWELL**, the Board voted 2-2-0 (Tidwell, White "aye"; Snyder, Van De Wiele "nays"; no "abstentions"; Henke absent) to recommended that the Board of

Adjustment allow staff to use their discretion in the issuing of permits and Certificates of Occupancy. Being mindful that any user that wishes to sell or serve alcoholic beverages or low point beer on premises as an incidental use is nevertheless subject to guidance and regulation by the A.B.L.E. Commission. Also, understanding that if and when staff has a question that they cannot answer they will, in their discretion, appear before the Board of Adjustment for further guidance.

This motion failed for a lack of majority; majority is constituted by an “aye” vote from three or more Board members.

Mr. Van De Wiele stated that he thinks the City staff already uses their best judgment and the reason he is voting against this motion, because if that is what is currently being done by City staff it is not necessary to receive Board approval to do that because staff already has it via City Ordinances. If the Board wants to say the sale of wine or low point beer at a barber shop or nail salon customarily or incidental to that use, then the Board can listen to testimony on that case and interpret the code. He is not here to give anyone authority that they do not have, and that is what is sounds like the Board is being asked to do.

Mr. White stated that the City staff is uncomfortable. Mr. Van De Wiele responded that he too is uncomfortable. Mr. Van De Wiele's resolution is to get an amendment to the code. Get some asterisks on the list as to what is customarily incidental to a use.

Mr. White asked Mr. Swiney what the Board needed to do to get the amendment implemented. Mr. Swiney stated that he had mentioned the appointment of a committee perhaps composed of himself, Ms. Miller, and someone from staff in the Permitting Department. The committee could then draft a proposal for the next meeting.

Mr. White asked if it was necessary to have a motion regarding the forming of a committee. Mr. White stated that the Chairman has the power to appoint a committee without a vote.

Ms. Back stated that another option for the Board would for the Board to review Mr. Ho's presented list by saying what is customary and what is not customary.

Mr. Ho came forward and stated that this takes everything back to the first question presented to the Board. If the Board is trying to consider the different options try not to table all the questions being presented today. He would ask the Board to give an interpretation to some of the uses being accessory uses or not accessory uses. Those decisions today would help City staff tremendously. What the City staff is attempting to do is not overstep their authority or responsibility, and rule where the Board does not want City staff to go. That is why the City staff has requested the Board's guidance.

Mr. White stated that City staff is far more experienced in dealing with requests of this nature than the Board is of hearing them. He feels the Permitting Department is more capable of making a determination than the Board.

Mr. Swiney stated that he is hearing a consensus from the Board that they trust staff, and that the Board does rely on their good judgment in such matters. That consensus helps staff to move forward while a change is being worked on. Mr. Swiney asked Mr. White, as Chairman, to appointment a committee. Mr. White stated the committee should consist of Mr. Mark Swiney, Ms. Susan Miller, and the Permitting Department staff.

On **MOTION** of **VAN DE WIELE**, the Board voted 4-0-0 (Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Henke absent) to **CONTINUE** Agenda Item #15, the request for a Tulsa Zoning Code Interpretation, to the Board of Adjustment hearing on November 13, 2012.

NEW BUSINESS

None.

BOARD MEMBER COMMENTS

None.

There being no further business, the meeting adjourned at 4:34 p.m.

Date approved:


11/13/12
Chair