

BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1082
Tuesday, November 13, 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 Snyder Tidwell, Secretary Van De Wiele White, Vice 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, November 8, 2012, at 9:24 a.m., as well as at the Office of INCOG, 2 West Second Street, Suite 800.

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

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

MINUTES

On **MOTION** of **TIDWELL**, the Board voted 4-0-1 (Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; Henke "abstaining"; none absent) to **APPROVE** the **Minutes** of the October 23, 2012 Board of Adjustment meeting (No. 1081).

NEW BUSINESS

21493-Kinslow, Keith & Todd – Nicole Watts

Action Requested:

Variance of the parking requirement from 56 parking spaces to 51 parking spaces (Section 1211.D); Variance of a 5 foot landscape area along abutting street Right-of-Way (Section 1002.A.2). **LOCATION:** 3712 East 11th Street **(CD 4)**

Presentation:

No presentation was made. The applicant has requested a continuance to the November 27, 2012 Board of Adjustment meeting to meet with the neighbors and gather additional information.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **CONTINUE** the request for a Variance of the parking requirement from 56 parking spaces to 51 parking spaces (Section 1211.D); Variance of a 5 foot landscape area along abutting street Right-of-Way (Section 1002.A.2) to the Board of Adjustment meeting on November 27, 2012; for the following property:

LTS 7 THRU 12 BLK 2, MAYO ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

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)**

Mr. Henke recused himself and left the meeting at 1:05 P.M.

Presentation:

Arthur Wallace, 5136 South Troost Avenue, Tulsa, OK; no presentation was made but the applicant was available for questions.

Mr. White inquired about an existing awning that was referred to on the application for the licence agreement. Mr. Wallace stated that the awning was installed before he knew about the permitting process. He is attempting to save his vehicles from an old pecan tree, because last year he paid \$7,000 in damages to vehicles. Mr. White asked Mr. Wallace about the use of the terminology of awning. Mr. Wallace stated that is an awning or carport, to him it is the same thing because that is what carports are called in California.

Mr. Van De Wiele asked if the license agreement dated August 27th had been approved by the City of Tulsa. Mr. Wallace stated the permit for the license agreement was on the engineer's desk, that the engineer was not in the office on Friday and the engineer's secretary is gone today so the form is waiting to be signed.

Mr. Van De Wiele asked Mr. Wallace if the City had prepared the form. Mr. Wallace answered affirmatively. Mr. Van De Wiele asked Mr. Wallace if the City was in agreement with the existing carport. Mr. Wallace stated that as far as he knew the City and all utilities are in agreement with the carport as it exists.

Mr. White asked Mr. Swiney if he had read the document in question. Mr. Swiney stated that he had not. Mr. White passed the document to Mr. Swiney.

Mr. White stated this is the first time the Board has had a request for an encroachment into the City property by a carport. The document contains terminology that is questionable, in particular, the terminology regarding the carport. Secondly, is the referral to the easement because it is a dedicated street right-of-way.

Mr. Swiney stated the document that he had been handed, and he has read, is a title agreement for construction in an utility easement. This is the same document that the City uses whenever there is a situation requiring a license. The form is a standard document that the City uses in applications similar to this case. The document has been signed by Mr. & Mrs. Wallace but it has not been signed by the Mayor or the City Engineer.

Mr. Swiney asked Mr. Wallace how he had obtained the document in question. Mr. Wallace stated that it had been given to him by the secretary of the Engineer. The form was on his desk and he was not in the office on Thursday or Friday of last week. Yesterday, November 12th, was a City holiday and the secretary is out of the office today. Mr. Swiney stated that once this is approved it will be satisfactory to give the

Wallaces the legal ability to have the carport, if it is agreeable to the Board of Adjustment.

Mr. White asked Mr. Wallace if he had been told by the Engineer's office if the approval was contingent on the Board of Adjustment's decision. Mr. Wallace stated that he was not told that, but was waiting on the City Engineer to sign the document.

Mr. Van De Wiele asked how far the encroachment was into the right-of-way. Mr. White stated that it is four feet into the City right-of-way and that there is no utility easement in the front of the residence.

Mr. Swiney stated, again, that the document is a standard document and that the form was probably taken off the shelf. Instead the document stating "utility easement" it should say "right-of-way".

Mr. White stated that he has seen awnings encroach into utility easements which is entirely different than right-of-way. A utility easement is part of the lot where this carport encroaching into a street right-of-way.

Mr. Van De Wiele asked Mr. Wallace to state his hardship. Mr. Wallace stated that he builds custom cars. He has two custom cars in the driveway as well as motorcycles. The pecan trees are causing severe damage to the vehicles. He does charity work for different organizations using the cars in custom car shows, and it is difficult to display a car with pecan damage.

Mr. White asked Mr. Wallace if he performed the vehicle restoration at his residence. Mr. Wallace stated that he did not but he does keep the custom cars in his driveway.

Mr. Wallace asked Mr. White to explain the difference between a right-of-way and a utility easement. Mr. White stated that a utility easement is in the rear of Mr. Wallace's property, and is on his property. The easement allows the utility company the right to lay lines on the property owner's land. The right-of-way is City owned property. Mr. Wallace stated that the awning is five feet from the actual curb, and is on the same lines as a fence.

Interested Parties:

Larry Davis, 5125 South Troost, Tulsa, OK; stated he lives across the street and northeast of Mr. Wallace with only one house in between. He requests that the Board respects the zoning code as it exists. When he looks out his front door and sees what Mr. Wallace has built it is an eyesore. The curb appeal has been lost for anyone that lives near or next to Mr. Wallace, which could possibly affect the sale of a home in the neighborhood.

Mr. Tidwell asked Mr. Davis if he had a problem with the carport or a problem with the length of the carport. Mr. Davis stated it was the length, because nowhere in the neighborhood is there a carport that long.

Rebuttal:

Mr. Wallace came forward and stated that he had over 50 signatures from people in the neighborhood, which is everyone but Mr. Davis and two other couples. The people that signed the petition did not have a problem with his property, they all stated that the property looked nice and thought the carport helped improve the area.

Mr. Tidwell asked Mr. Wallace if he could live with a 30 foot long carport. Mr. Wallace stated that 30 feet would expose half of his vehicles to the elements.

Comments and Questions:

Mr. Van De Wiele asked Mr. Swiney which should come first in this case, the City's execution or the Board's approval. Mr. Swiney stated that from a convenience point of view he thought the Board could approve Mr. Wallace's variance request subject to the approval of the license agreement. That would save Mr. Wallace from appearing before the Board again. Or the Board could continue the case for two weeks, in which time the agreement could be signed and that would require Mr. Wallace to appear before the Board again.

Ms. Back informed the Board that the pictures from the site visit shows parking outside of the carport on the grass, and also on the sidewalk. These items should also be addressed.

Mr. Van De Wiele pointed out to Mr. Wallace that the pictures on the video screen seemed to show a truck and trailer parked partly on the grass. Mr. Wallace stated that the truck and trailer are actually parked on a concrete slab. Mr. Van De Wiele then asked Mr. Wallace about the dual-wheel truck parked in the street, that appears to be parked partially over the curb. Mr. Wallace stated there is no curb in the area.

Ms. Back stated that when she made the site visit there appeared to be a distinct sidewalk from what was the roadway. Mr. Wallace stated that it was a sidewalk that connected to nowhere.

Board Action:

On **MOTION** of **TIDWELL**, the Board voted 4-0-1 (Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; Henke "abstaining"; none 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 meeting on November 27, 2012 to allow the City Engineering Department to reach a definitive conclusion by approving or disapproving the document discussed by the Board today by deliniation of the street right-of-way and containing the proper terminology of carport rather than awning; for the following property:

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

Mr. Henke re-entered the meeting at 1:27 P.M.

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); Variance of allowed total display surface area from 259 square feet to 405 square feet (Section 1221.E.3). **LOCATION:** 407 North Cincinnati Avenue **(CD 4)**

Ms. Snyder recused herself and left the meeting at 1:28 P.M.

Presentation:

Stephen Schuller, 100 West 5th Street, Suite 1100, Tulsa, OK; stated this is the third time he has been before the Board on this project. This project is a new state of the art Griffin Communications media center being constructed in the Brady District for Channel 6, KQCW, and the offices and studios for Newson6.com. There are two properties that they are constructing their facilities on, on the north side of Cameron Street between Boston Avenue and Detroit Avenue. The main studio building is between Boston Avenue on the west side of Cincinnati Avenue, now called Martin Luther King, Jr. Boulevard, which is owned by Griffin Communications. The telecommunication tower, satellite dishes and other electronic and mechanical facilities are on the east side of Cincinnati Avenue on property that is owned by George Kaiser Family Foundation real estate division. This is the first new major television studio in Tulsa in many years. It is an important and positive step for the Brady District and downtown Tulsa. The alley has been vacated so the property line goes to the center of what was the alley. The tower was placed on the Kaiser property, in large part, because there was not enough room left on the studio parcel. The tower property is connected to the studio by the underground fiber optic and electrical cables. These are integrally separate portions that are a part of the whole Griffin Communications Media Center. One of the variances that has been requested, as a result of a Letter of Deficiency from the Sign Plan Department, is to use a portion of the communication tower to attach three signs. Two of the signs will designate Channel 6 and the third sign will designate CW. There are existing signs on other television towers throughout Tulsa, and the most familiar sign is KJRH, Channel 2 in Brookside. The tower that was

erected by KOTV has been engineered for the type of signs designated on the site plans. KOTV was the first Tulsa television station, and it signed on the air 63 years ago last month. The intention that Griffin Communications has is to create the iconic sign for a very historic downtown Tulsa business. Tower signage is an icon in downtown Tulsa for historic downtown Tulsa structures, i.e., the Beacon Tower Building and the Mayo Hotel. In modern times, the BOK Tower has the BOK on the face and the OneOk Building has OneOk on top of the building. The proposed signs are not the type of signs that would be in front of a business that are designed to attract pedestrian or vehicular traffic, these are signs that represent historic Tulsa and a major business that is represented downtown. The three signs on the tower is the most feasible way to allow this kind of signage for Griffin Communications Media Center. The signs will be positioned about 160 feet above the ground, because a 50 foot tall sign on the Griffin property would be essentially obscured by the expressway that runs near the subject property. The two signs that will face the expressway will be limited to an aggregate display surface area of 270 square feet, or 11'-0" x 12'-0" each. There are no other signs contemplated for the studio property or the subject property. As part of the sign application and part of the Board of Adjustment variance application there is an added component of the relief requested as a caution. There was a question raised as to whether the proposed signs were outdoor advertising signs or a sign that is not located on the lot of the business address. What will be accomplished today is to resolve that issue and void any doubt in the future. The proposed signs are not outdoor advertising signs, because the business that is identified by the signs is actually conducted on the lot where the tower is located. Griffin Communications straddles Cincinnati Avenue by being connected electronically with cabling and fiber optics. It is all part of the same media center. The telecommunications portion, the sending and receiving of signals, all takes place on the subject property where the tower is located. Another item that was requested on the Board of Adjustment variance application is the request to allow the total display surface area to be 405 square feet, and that has been resolved. The resolution came after it was discovered that the calculations for the street frontage along Cincinnati and the freeway frontage was not taken into consideration. The City has been given a letter from the Kaiser Foundation stipulating that they agree, or consenting, to the application of the street frontage to the calculation of the aggregate display surface area. These two variance requests mentioned will no longer be needed for consideration.

Interested Parties:

James Adair, Claude Neon Federal, 7508 East 77th Street, Tulsa, OK; stated the signs will be constant light. The illumination of the signs are LED's because of the height of the signs, and LED's will cut down on the maintenance issues. The LED was chosen over several options because of the low energy consumption. The LED's will be spaced close together so that at a distance the lights will appear to be a solid color. At night the viewer will see a solid red or a solid white even though the lights are individual LED's. As for the illumination, in the current sign code the LED's mentioned are for an electronic message center. Because the LED's are exposed they have a maximum NIT level of 500 NITs at night and 6,500 NITs during the day. There are two light sources in the sign code, one is NITs for exposed LEDs and the other is foot candles for the

fluorescent lighting with plastic lens covers. The sign code only distinguishes exposed LEDs regarding an electronic message center. When LEDs are used as a light source to illuminate a building, such as, Arvest Bank, ONG, or other banks or buildings, that issue has not been addressed. Mr. Robert Kolibas, a sign inspector with the City of Tulsa, can validate these statements.

Mr. Van De Wiele asked if the subject signs were being designed to comply with the exposed LED standard for the electronic message center. Mr. Adair stated they are not. Electronic message centers have a solid background with multiple LEDs, and the LEDs are so close together that a brightness issue is created. LEDs in the sign industry are coming on strong and are the future of the industry. Fluorescent lamps and neon are going away.

Mr. Schuller came forward and stated that the applicant has not requested any relief as to the brightness of the sign, so it will need to be in compliance with the City sign codes as to the brightness and intensity of illumination. The brightness of the subject sign will be considerably less than the strobe beacon on top of the tower that is required and approved by the FAA.

Lorinda Elizando, Lamar Outdoor Advertising, 7777 East 38th Street, Tulsa, OK; stated the Lamar Company's, TLC Properties, also owns an easement where they have a billboard which is 91 feet west of the subject tower. She asked the Board to clarify whether the sign is an on premise sign or an outdoor advertising sign. If the subject signs are to be determined as an outdoor advertising sign she thinks there should be a variance for the distance between Lamar's billboard and the subject tower.

Mr. White asked Ms. Elizando if the Lamar sign was currently an LED sign. Ms. Elizando stated that it was not currently. But should Lamar decide to upgrade the billboard structure it would no longer be a conforming sign if the Board rules that the subject signs are outdoor advertising signs.

Marvin Shirley, Development Consulting Services, 720 South Norfolk, Tulsa, OK; stated that he was involved in the initial siting of the subject tower. His firm worked with Lamar and the tower position was determined by Lamar to ensure that the visibility of the Lamar sign would not be obstructed.

Mr. Van De Wiele stated that there is a valid question raised in this case. If, in fact, the subject signs are outdoor advertising signs and there is only 91 feet separating the subject signs and Lamar's sign, should there be a variance concerning the spacing. Mr. Swiney stated that he had questioned Mr. Schuller about whether the signs were or were not outdoor advertising signs. Mr. Schuller demonstrated that they are not outdoor advertising signs, the signs are advertising a business that is being conducted on the lot. Therefore, the outdoor advertising sign question is not there.

Mr. Van De Wiele asked Mr. Swiney if his determination that the subject signs were not outdoor advertising signs is due to the fact that the two lots are connected via

communication equipment and wiring. Or is it because there is actual business taking place on the subject lot, separate from the studio property. Mr. Swiney stated that he thinks it is both.

Mr. Schuller came forward and stated that in past days there was a physical store, but in the telecommunication business it is different. The telecommunication business is constituting a variety of venues, and in this particular instance, the component is the sending and receiving of signals electronically over the air. Those transmissions are happening on the subject lot, and they are an integral and necessary part of the telecommunication business that is News on 6 and Griffin Communications. This business is being conducted on this property thus making the subject signs not outdoor advertising signs.

Mr. Adair came forward and stated that he has worked on this project for six months. The project started when Shannon Bengé was still with the City, and since he has met with Robert Kolibas several times. Mr. Adair and Mr. Kolibas determined together that the outdoor advertising sign issue needed to be discussed, not that he predetermined that the signs were outdoor advertising signs. That is why the issue was placed on the Letter of Deficiency because everyone wanted clarification from the Board of Adjustment.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-1 (Henke, Tidwell, Van De Wiele, White "aye"; no "nays"; Snyder "abstaining"; none absent) to **APPROVE** 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), determining that the third and fourth Variance requests applied for in the original application are no longer necessary because the subject signs are not outdoor advertising signs but are in fact business signs. The signs are connected electrically and mechanically between the two properties from which the signs would be located on the tower for the business that the signs represent. This approval is per plan on page 3.18 and page 3.19. On site plan page 3.19 the sign is a green and white LED sign. The approved signs will be by constant light and the lighting will be by LEDs. The lighting will be a maximum of 6,500 NITs during the day and 500 NITs during the night. 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 LESS RY & W/2 VAC ALLEY ADJ ON E BLK 21,TULSA-ORIGINAL TOWN,
NORTH TULSA, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

Ms. Snyder re-entered the meeting at 2:08 P.M.

21485—Kinslow, Keith & Todd – Nicole Watts

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); Variance of lot frontage from 200 feet to 100 feet (Section 903). **LOCATION:** 5929 East 15th Street South **(CD 5)**

Presentation:

Nicole Watts, 2200 South Utica Place, Suite 200, Tulsa, OK; stated that A-1 Sheet Metal has purchased a piece of property along 15th Street that is near the existing business. The property has an existing structure on it and they want to raze the structure and build a new facility. The existing structure is approximately 65 feet from the centerline of 15th Street. The zoning code requires 100 feet from the centerline, per IM zoning. The property has a flood plain in the rear that will not allow the new building to be built farther back on the property. Structures in this area are built closer than 100 feet from the centerline, and there have been numerous board actions that have allowed the 65 feet. In the IM zoning there is also a minimum of 200 feet in lot width required, and the existing lot is 100 feet wide.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White “aye”; no “nays”; no “abstentions”; none absent) to **APPROVE** 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); Variance of lot frontage from 200 feet to 100 feet (Section 903), finding that the existing lot which is 100 feet in width contains a floor plain toward the rear of the property limiting the rear portion of the lot for building usage and that other properties in the nearby vicinity have a similar front centerline setback of 65 feet or closer. This approval is subject to conceptual site plan on page 4.19. 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:

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

NEW BUSINESS

21491—Impact Engineering & Planning

Action Requested:

Variance of the off-street parking requirement from 3,500 parking spaces to 610 parking spaces for non-overlapping school and athletic uses (Section 1201.D);

Variance of the required building height from 35 feet to 47 feet in a Residential District (Section 403.A, Table 3). **LOCATION:** 5830 South Hudson Avenue **(CD 9)**

Presentation:

Kevin Vanover, Impact Engineering & Planning, 109 North Birch, Owasso, OK; stated the project being presented to the Board today is very similar to the project at Booker T. Washington Prep School, that was previously heard by the Board of Adjustment. The project is an addition of a field house as a multi-purpose athletic facility. There is a football stadium on site and the football stadium generates a great need for parking spaces. The hardship for the parking variance is that a lot of the school uses do not overlap and no new uses are being generated.

John Alig, 4632 South 181st East Avenue, Tulsa, OK; the school is in a residential area and that only allows for a 35 foot height, and he would request the Board allow the height to be 47 feet. Only a portion of the building would exceed the 35 foot height. The actual front of the building is approximately 320 feet away from South Hudson. The main entry is recessed into the ground just slightly, so if a person is looking at the front entrance only about 45 feet is visible.

Interested Parties:

Dr. Jeanette Quarles, 5819 South Hudson Place, Tulsa, OK; stated she is employed by the State Health Department and she is appearing as a representative of the neighborhood association. The neighborhood association has been working with the school system, and the City and County for a couple of years in regards to existing concerns, i.e., parking. Ms. Quarles presented the Board with a draft of a proposal that the neighborhood association has been working on with City, County and the school

system. What the neighborhood association is looking at is a sidewalk project the length of Hudson from 51st Street to 61st Street. There are breaks in the existing sidewalk and children attending two different schools use that sidewalk. The neighborhood association is concerned about the parking. People park on the shoulder, some are parking at an angle, some are parallel parking, and with the lack of sidewalks there have been quite a few safety concerns. The latest development is that G. T. Bynum and several representatives of various city departments met, and they are in favor of the proposal that concerns the funding. G. T. Bynum was to schedule a meeting with County Commissioner Fred Perry to discuss the county monies that may be available. G. T. Bynum is also to have a meeting with Dr. Ballard to discuss any school participation in adding the parking along Hudson. She stated that the City is willing to perform the construction but the City is not responsible for the influx of the visitors to the different facilities along Hudson Avenue. A copy of the proposal presented to the Board today was sent to Mr. Robert LaBass, Director of Bond Projects with Tulsa Public Schools, last spring and everyone's preliminary response has been positive. This proposal might be a consideration of this Board regarding the variance on the parking, as to responsibility for the parking that is being considered on Hudson Avenue.

Lloyd Hobbs, 5846 South Hudson Place, Tulsa, OK; stated the back door of his home looks out at the front door of Memorial High School. He has no problem with the variance request on the height. The structure will be built far enough to the west of Hudson that it will not really affect the neighborhood. The parking is a problem. Currently there is parking on both sides of Hudson Place from 58th Street to the cul-de-sac at 61st Street and that presents a problem. The street is 26 feet wide with parking allowed on both sides of the street. With eight feet of parking on each side totals 16 feet, leaving 10 feet for an emergency vehicle to travel the street. The fire hydrants are all on the east side of Hudson Place. Some of the conditions that he and the neighborhood would like to see imposed is to have the City place signs stipulating no parking on one side of the street during events, which allow a little more room for an emergency vehicle. There is no parking on the south side of 58th Street which is good. Another problem is trash in the neighborhood. People that live on the west side of Hudson have a continual chore of picking up trash after events. The neighborhood would like to see signs directing people to place the trash in the proper containers located in or near the parking lot. They would like to see all events at the facility be completed by 10:00 P.M. All lights around the new facility, except for security lights, should be extinguished by 10:30 P.M. All events of the new facility should start within two hours of school class closing time, which would allow approximately a four hour window to have the events. No event should coincide with events being held at the County football stadium. The neighborhood residents would like to live in a safe neighborhood for emergency vehicles and elderly residents.

Mr. White asked Mr. Hobbs if he had spoken to the Tulsa Public Schools about the neighborhood concerns and requests. Mr. Hobbs stated that he has not but he has spoke to the athletic director about a year ago.

Robert LaBass, Tulsa Public Schools, 3027 South New Haven, Tulsa, OK; he came forward to answer questions.

Mr. Tidwell asked Mr. LaBass about the possibility of an event taking place at the multi-purpose facility at the same time as a football game being held. Mr. LaBass stated that it was a possibility but he thinks it would be rare. The school system is aware of the problems and they work at attempting to resolve them all the time.

Rebuttal:

Mr. Vanover came forward and stated that as far as the lighting concerns, this project is only adding lighting immediately around the building. The parking lot lighting is there for security but it is limited in its scope. He would be willing to forward the neighborhood requests for signage but Tulsa Public Schools cannot pay for them because it would violate state statutes. As for lights being turned off by 10:30 P.M. that is a football stadium issue, not this facility's issue. The school system cannot commit funds to the sidewalk funding, especially off site. In regards to the trash issue, that is an interdepartmental issue of the Tulsa Public Schools. This facility is not going to increase the public attendance, because the events are already happening on campus. The events will just move out of the main building into the new subject building. The new facility has approximately 1,250 seats and the existing facility approximately 1,000. In a normal game there are usually 500 seats filled, so to fill all the seats it would have to be an exceptional event.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a **Variance** of the off-street parking requirement from 3,500 parking spaces to 610 parking spaces for non-overlapping school and athletic uses (Section 1201.D); **Variance** of the required building height from 35 feet to 47 feet in a Residential District (Section 403.A, Table 3). This approval is subject to conceptual site plan on page 5.13 and page 5.14. Finding that this is an RS-3 zoned area with a required height of 35 feet, but this is a school that already exceeds the 35 height limitation, and is well away from residential structures to the east. As for the parking spaces, the 3,500 is calculated and based on the stadium which runs the numbers up in conjunction with the school. The 610 parking spaces is more compliant with that which is actually used during the events. The Board encourages the parties involved, the Street Department, the Public School System, and the neighborhood, to work with each other in an attempt to resolve any operational issues. 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:

A tract of land lying in the Southwest ¼ of Section 34, Township 19 North, Range 13 East of the Indian Base and Meriden, Tulsa County, State of Oklahoma, according to the United States Government survey thereof and being more particularly described to-wit:

Commencing at the Southeast corner of the Southwest ¼ of said Section 34; thence N 01°29'55" W a distance of 985.70 feet; thence S 88°30'05" W a distance of 80.00 feet to the point of beginning; thence S 88°30'05" W a distance of 797.50 feet; thence N 01°29'53" W a distance of 790.63 feet; thence N 07°45'25" E a distance of 202.00 feet; thence N 88°30'05" E 205.00 feet; thence N 01°29'55" W 875.00 feet; thence N 88°30'05" E a distance of 560.00 feet; thence S 01°29'55" E a distance of 1,865.00 feet to the point of beginning. Said tract containing 29.299 acres more or less, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21492—Chad Sterne

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:** 11120 East Admiral Place South (CD 3)

Presentation:

Chad Sterne, 6405 East Haskell Place, Tulsa, OK; no presentation was made but the applicant was available for questions. Mr. Henke stated that the Board was in receipt of Mr. Sterne's survey.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) based upon the facts in this matter as they presently exist to **ACCEPT** the applicants request for a Spacing Verification 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; for the following property:

W216.4 E584.8 N427 GOV LT 8 LESS N75 FOR ST SEC 6 19 14 1.748ACS, WAGON WHEEL TRADE CENTER, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21494—Tim Carrigg

Action Requested:

Variance of the side yard setback requirement from 20 feet to 5 feet in the RS-3 District (Section 403.A, Table 3.5). **LOCATION:** 2626 South Cincinnati Avenue East (CD 4)

Presentation:

Matt Means, 10865 South 94th East Place, Tulsa, OK; stated he is a contractor that has been hired to remodel Mr. Carrigg's home. There is a detached garage with a covered walkway between the house and the garage. This remodel will be as simple as attaching the house to the garage. Nothing major is changing, but the building line is changing slightly because of attaching the two structures together.

Interested Parties:

Jim Beach, 7830 South Louisville, Tulsa, OK; stated he is in support of the application and wants to lend any support the Carrigg's may need in this request. The area they want to enclose is already constructed but now it will be enclosed. The garage was built in its current position in 1930, which is prior to today's zoning code.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Variance of the side yard setback requirement from 20 feet to 5 feet in the RS-3 District (Section 403.A, Table 3.5). This approval is subject to conceptual site plan on page 8.7. Finding that the proposed addition to the house actually is filling in between an existing garage and an existing residence and will not intrude any further in any direction away from the current structures. On the north, the five feet setback of the garage is to a street that is, while dedicated, not open. 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 BLK 13, SUNSET TERRACE, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21495—Mark Bragg

Action Requested:

Variance to allow two (2) wall signs in an RS District (Section 402.B.4). **LOCATION:**
7777 South Lewis Avenue (CD 2)

Presentation:

The applicant was not present.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White “aye”; no “nays”; no “abstentions”; none absent) to **APPROVE** the request for a Variance to allow two (2) wall signs in an RS District (Section 402.B.4), subject to conceptual site plan on page 9.13, page 9.14, and page 9.15. Finding that the signage in question is necessary to guide student and visitor traffic on the campus. 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**

* * * * *

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 went through a list at the last meeting and he will not read the list at this meeting. There are several places where intoxicating beverages or low point beer can be sold or served for consumption on premises, and the Tulsa Zoning Code covers this. Under Use Unit 12.A there is a bar, tavern, beer bar is limited to low point beer by definition, a billard parlor or pool hall which is limited to low point beer, night club and a sexually oriented business. Under Use Unit 19, Section 1219, the hotel or motel are designated as an accessory use customarily incidental and subordinate to the principal use. Use Unit 12 can have a restaurant with an accessory bar. Use Unit 2 contains private clubs that can have an accessory bar, and accessory bars are also permitted for "not for profit" lodges, posts, clubs, etc. The enforcement section, Section 1501.C, states that the duty of the Code Official is required to evaluate the application and shall issue or notify the applicant in writing of the refusal and setforth a reason. If Mr. Enix, or his department, were to turn an applicant down what code section is he to site. A Bed and Breakfast facility can have weddings with a reception, and the Board has has been approved these in the past as customarily incidental and subordinate to the principal use. Community Centers, Event Centers, Cultural Centers, etc., are used much in the same way as a Bed and Breakfast facility as far as the receptions or parties are concerned. Under Use Unit 12 there is a listing for cafeteria or delicatessen, these are a branch of an accessory use of a bar in a restaurant. Uses where customers have requested approval for the sale or serving of intoxicating beverages and/or low point beer for consumption on premises are art galleries, barber shop, beauty shop, nail salon are just a few. The barber shop, beauty shop, and nail salon requests are becoming more and more prevelant in requests.

Mr. White asked Mr. Enix why the ABLE Commission was hesitant in issuing beverage licenses. Mr. Enix stated that the ABLE Commission requires a Certificate of Compliance from the City of Tulsa. In order to receive the Certificate of Compliance from the licensing section, a Certificate of Occupancy must be supplied to the licensing section. He is the person who stamps the Certificate of Occupancy that authorizes the licensing department to issue the Certificate of Compliance that is supplied to the ABLE Commission.

Mr. Van De Wiele asked Mr. Enix if a person owned an art gallery and hired a caterer to serve the intoxicating beverage or low point beer, would that present a problem as long as the caterer had a valid license? It is Mr. Enix's understanding that it would be subject to the ABLE Commission rules and what the license restrictions were for the caterer.

Mr. Tidwell asked if the art gallery owner could become a caterer and hire themselves to cater the event. Mr. Enix stated that theoretically they could but the owner would then need to get into a different business, and there are a multitude of ABLE Commission rules that must be followed to become a caterer making the concept not practical.

Mr. Van De Wiele asked Mr. Enix if the standard is customary, or is it customary incidental, or is it customary accessory. He was thinking it was two, one of which is customary. Is it accessory use? Mr. Enix stated that the City is attempting to obtain accessory use. To do that the definition of accessory use states customarily incidental and subordinate to. Mr. Van De Wiele stated that what he is understanding is that to approve an application there needs to be a finding that the consumption and sale of wine at the beauty shop is accessory use. Mr. Enix confirmed Mr. Van De Wiele's statement. Mr. Enix went on to explain that once that finding is received the applicant then goes to the ABLE Commission, because intoxicating beverages cannot be served until the ABLE Commission approves the license. The ABLE Commission then monitors, and they have very strict rules, to guarantee the intoxicating beverage remains an accessory use and that the principal use maintains status quo ante.

Ms. Snyder asked Mr. Enix if a business owner wanted to give away the intoxicating beverage is there a license required? Mr. Enix stated that in his conversations with the ABLE Commission it is not in compliance with ABLE Commission rules, to sell or serve an intoxicating beverage.

Mr. Enix stated, that while the City has been making determinations as code officials, for the items that have been discussed today, it is the City's desire to stay on the same page as the Board. That is why the City is before the Board requesting an interpretation. The City wants to know if the Board has any objections to the way the code has been administered. Or the Board members could review the listings in the code and make an interpretation per use.

Mr. Henke stated that he would object to the serving of an intoxicating beverage at a drive-in theatre. Mr. Enix stated that was an application that had come to the City for review, and City Legal found a state statute that states an intoxicating beverage or low point beer cannot be served in motion picture theatres. Again, this is a decision that had to be made in his department. His department did advise the applicant that they had the right to come before the Board of Adjustment to appeal the City's decision.

Mr. Van De Wiele asked what standard has Mr. Enix's department used up until today. Mr. Enix stated that they have looked at general down to specific. The culture of the city is used as a factor, then reduce it down to what is happening in the particular trade, i.e.,

the beauty shop. It is a gathering of information, and interacting with the ABLE Commission and finding out what their position is, and consulting with the legal staff before making a final decision on the application. It is taking all of this into account to determine if something is customary.

Ms. Snyder asked Mr. Enix if his department had spoken with the ABLE Commission in regards to any of the new uses. Mr. Enix stated that he had spoke with the ABLE Commission about the beauty shop, barber shop, and nail salon because he did not want this meeting to be an exercise in futility. The ABLE Commission agreed that if the City approved the application they would issue a license. The ABLE Commission knows this is happening all over Tulsa, and they are attempting to get it under control.

Mr. Henke asked Mr. Enix, for clarification, if he is requesting the Board to go down through the listing of uses, i.e., art gallery, studio for painting, drive-in theatre, etc. giving the City a guideline to use starting today. Mr. Enix stated that it is entirely up to the Board as to how they want to handle it.

Mr. Swiney stated that at the last meeting, in Mr. Henke's absence, Mr. White appointed a committee. The committee was composed of Ms. Miller, Mr. Swiney, and the code officials. The committee had a meeting and Mr. Edmiston, a legal colleague from the City, also attended the meeting. The product of the meeting was proposed interpretation that is in the Board's agenda packet. The discussion was whether the Board of Adjustment is being asked to give authorization to a code official that they did not have prior to the last meeting. The answer is no. The code officials have the authority, however, the code officials would like clarification from the Board of Adjustment. The proposed interpretation that has been presented to the Board could be called a letter of no objection. In other words, stating that the code officials have the ability, the authority, and the judgement necessary to make these decisions and that the Board would like for the code officials to continue to do so.

Mr. Henke asked Mr. Enix and Mr. Yuen Ho if they were comfortable with the document, and if the document is what they would like to have discussed by the Board. Both concurred.

Mr. Swiney stated that there other options available to the Board, if in the Board's judgement they would like explore those avenues. That is, the Board can impose an interpretation that is the Board's own not from the presented document. An ordinance can be amended, but that is a complicated process. The current zoning code is under revision which will be completed by next summer. There is also the option of doing nothing and allowing the code officials to continue operating status quo ante.

Mr. Van De Wiele stated that the question he has is, does this give weight to the fact that any of the items listed under uses, the Board is saying that the sale or provision of alcoholic beverages is customarily incidental or accessory to those uses. He thinks all this is saying that the code officials continue their practice of approving or denying

whether those uses are or are not. He thought that is what the Board agreed on at the last meeting, but maybe the Board didn't. He knows there was a motion that failed.

Mr. Swiney stated that it is the committee's intention that the Board is not deciding this is an incidental use or is not an incidental use. Rather the Board is confirming that the code official should make the determination. In Section 1605, it is titled Appeals From An Administrative Official. In that section it states an appeal to the Board of Adjustment may be taken by any person aggrieved, or by any officer, department, board or bureaus of the city affected, where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this code. Upon an appeal to the Board of Adjustment, the Board of Adjustment can state the code officials are correct or can say no, that the code official did not make a correct decision.

Mr. Van De Wiele asked if there was anything in the code that will allow a code official the leeway of saying the sale of an intoxicating beverage at the XYZ Beauty Palor is accessory use to the fixing of hair or the painting of nails. He does not want to give authority where it is not needed.

Mr. Swiney cited Section 1501.C, "after an application for a Zoning Clearance Permit is filed in compliance with the provisions herein, the Building Inspector/Code Official shall issue a Zoning Clearance Permit, and return one copy of submitted plans or shall notify the applicant, in writing, of his refusal to issue a permit setting forth the reasons therefore. That is what Mr. Enix has mentioned earlier. For example, if a drive-in movie theatre wishes to have this accessory the code official can say the approval will not be given, then point to the specific state statute that forbids the sale of low point beer in a movie theatre. Mr. Van De Wiele stated that what he is looking for is the flip side of that statement, what is it that physically gives the code official the authority. He is less concerned about what the powers of the Board as opposed to what the powers of the permit review department is. He thinks the Board is being asked to give more leeway to permitting issues. His concern is putting alcohol into more uses, and that this is something that could be addressed more clearly in the rewrite of code that will happen in less than 12 months.

Mr. Swiney stated that it was the intention of the committee that the Board of Adjustment is not giving any more leeway to the code officials than they had before. He understands Mr. Van De Wiele's point on the service of alcohol. Washing cars for a patron of a hair salon is truly an accessory use, because the primary reason for the patron's visit is to have her hair fixed. The service of wine while a patron is at the appointment should be another accessory use, although the service of alcohol is different from a shoe shine or car wash. Mr. Swiney stated that he does not see anything specifically authorizes alcoholic beverage sale or service.

Mr. Van De Wiele asked if there was any place that grants the determination of what is accessory or customarily incidental to. Maybe that is so embedded in the determination process that it is not spoken. Mr. Swiney stated there are places where accessory use bars are mentioned as incidental and subordinate to, i.e., a restaurant. Common

knowledge is that service of alcohol is customary in a baseball stadium or bowling alley. Therefore, it is an accessory use if it is not the principal use and it is not the principal use because no one visits a barber shop to have a drink.

Mr. Enix stated there is business use, Use Unit 11 for offices. There is always a storage area is that Use Unit 23? Use Unit 23 storage is not allowed in most places where Use Unit 11 is allowed. The City routinely make the determination whether or not something is accessory to. That is just one example, the storage facility within an office space. That determination is just part of the administration of the code, to make the determination whether or not something is accessory.

Ms. Snyder asked if the influx of requests for the service of alcohol has just started happening, or if it was a build up of random applicants making the request over an extended period of time. Mr. Enix stated the requests from a hair or nail salon started about four or five years ago and it has gradually increased. Now applicants show up with the Certificate of Occupancy in hand, or they ask for a copy of the certificate, because they think they will take the certificate so they can obtain the Certificate of Compliance. When he tells the applicant that the Certificate of Occupancy needs to be stamped before they can receive the Certificate of Compliance, they are baffled over the fact that they cannot further their process. That is when his department explains the step-by-step process.

Mr. Van De Wiele asked if there was a plan in place for the new version of the code to more clearly state that this will be accessory use to these uses?

Yuen Ho, City of Tulsa, 175 East 2nd Street, Tulsa, OK; came forward to answer Mr. Van De Wiele's question. At this point the code is still under discussion with the consultant, and the questions have been raised. There are several dialogue discussion expected over the issues.

Ms. Susan Miller stated that sometime in the summer of 2013 a final draft is to be prepared. The first module of the code has just been discussed and reviewed and it did not include the section that is under discussion today.

Mr. Ho stated that Mr. Enix has pointed out that the zoning code is very clear about certain businesses being able to serve alcoholic beverages. In one particular instance, the code is very clear about the family billiard center alcoholic beverages cannot be served. Then there is a slew of businesses where alcohol can be served, and that is where the City is attempting to obtain answers. The task before the City is find out if the alcohol beverage is an accessory use. Under the definition of accessory use the City must make a determination whether it is customarily incidental and subordinate to. The City staff has had discussions as to what is subordinate to as opposed to what is customarily incidental to. The City staff looks at trends to see what is happening and usually there are two groups. One is where the business owner would cater the alcohol beverage service in and it becomes the norm for that particular practice. There comes a point where the business owner says he can be more profitable if he performs the

service rather than have it catered in. There is a second group of customers that come to the City with a business model and they think it would be nice to allow their clientele to have a alcoholic beverage while waiting. There is nothing for the City to use as an outline as to whether it is customarily incidental to. In event centers certain cultures, i.e., a high school reunion, will have alcoholic beverages catered in. It is legal to do this. This is done all the time. How does the City say no when the code does not say the City can say no.

Mr. Van De Wiele does not understand why the Board is being asked to approve that which is already being done.

Ms. Snyder would like these questions to be more delineated in the new code because it will make it easier on City staff.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-1-0 (Henke, Snyder, Tidwell, White "aye"; Van De Wiele "nays"; no "abstentions"; none absent) to **ADOPT** the Interpretation, The City of Tulsa Board of Adjustment requested for the Sale and/or Service of Alcoholic Beverages for On-Premises Consumption, as an accessory use as submitted today by the committee appointed October 23, 2012.

NEW BUSINESS

None.

BOARD MEMBER COMMENTS

None.

There being no further business, the meeting adjourned at 3:37 p.m.

Date approved: 11-27-12

Frank X. Henke, III
Chair