

BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1198
Tuesday, January 9, 2018, 1:00 p.m.
Tulsa City Council Chambers
One Technology Center
175 East 2nd Street

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	OTHERS PRESENT
Van De Wiele, Chair Flanagan, Vice Chair Back, Secretary Bond Ross		Miller Moye Sparger Ulmer	Blank, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on January 18, 2018, at 11:31 a.m., as well as at the Office of INCOG, 2 West Second Street, Suite 800.

After declaring a quorum present, Chair Van De Wiele called the meeting to order at 1:15 p.m.

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

MINUTES

On **MOTION** of **BACK**, the Board voted 5-0-0 (Back, Bond, Flanagan, Ross, Van De Wiele "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the **Minutes** of the January 9, 2018 Board of Adjustment meeting (No. 1197).

UNFINISHED BUSINESS

22361—Shaun Schaefer

Action Requested:

Special Exception to allow a Bed and Breakfast (Airbnb) in an RS-3 District (Section 70.120). **LOCATION:** 1602 South Trenton Avenue East (**CD 2**)

Presentation:

The application has been withdrawn by the applicant.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

No Board action required; for the following property:

LT 1 BLK 13, ORCUTT ADDN, City of Tulsa, Tulsa County, State of Oklahoma

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NEW APPLICATIONS

22387—The Outsiders Museum Association

Action Requested:

Special Exception to allow a Public, Civic and Cultural Exhibit/Museum Use in an RM-1 District (Section 5.020); Variance to reduce the building setback from an R-zoned lot (Section 5.030). **LOCATION:** 731 North Saint Louis Avenue (**CD 1**)

Presentation:

Staff requests a continuance to the February 13, 2018 hearing so that additional relief may be properly noticed.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **BOND**, the Board voted 5-0-0 (Back, Bond, Flanagan, Ross, Van De Wiele "aye"; no "nays"; no "abstentions"; none absent) to **CONTINUE** the request for a Special Exception to allow a Public, Civic and Cultural Exhibit/Museum Use in an RM-1 District (Section 5.020); Variance to reduce the building setback from an R-zoned lot (Section 5.030) to the February 13, 2018 Board of Adjustment meeting; for the following property:

LT-15-BLK-10; LT-14-BLK-10, INGRAM-LEWIS ADDN, City of Tulsa, Tulsa County, State of Oklahoma

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UNFINISHED BUSINESS

22377—Justin Reed

Action Requested:

Special Exception to allow a dynamic display sign in an R District (Section 60.050); Variance to exceed the permitted display area of a freestanding sign; Variance to exceed the permitted display area of a dynamic display sign; Variance to exceed the permitted height of a sign in an R District (Section 60.050). **LOCATION:** 3319 West 41st Street South (**CD 2**)

Presentation:

Justin Reed, 4419 West 55th Place, Tulsa, OK; stated he went back to the church after the last hearing and spoke to them about shrinking the sign down to an overall 20-foot height and making the dynamic display 32 square feet. The church stated they would be okay with that sign size.

Mr. Van De Wiele stated that if the height of the sign came down to 20 feet total there would be no need for relief. Mr. Reed stated the dynamic display would be a 4 x 8 with a 3 x 8 cabinet on top of that, so there would be a Variance for an additional 21 square feet. The current sign is 40 square feet, so the difference would be an 11 square foot larger overall sign.

Mr. Van De Wiele asked Ms. Moye how much overall signage would be allowed on the subject property. Ms. Moye stated the sign cannot exceed 32 square feet, so the total of the free-standing sign cannot exceed 32 square feet along the West 41st Street frontage.

Mr. Van De Wiele asked Mr. Reed if he wants to go to a 7 x 8 overall sign. Mr. Reed answered affirmatively. Mr. Van De Wiele stated that would be 56 square feet, and he asked Mr. Reed if he had a 40 square foot sign. Mr. Reed answered affirmatively. Mr. Van De Wiele stated that would be a Variance request for 24 square feet.

Mr. Reed stated the existing sign would be raised to 20 feet in height and adding 16 square feet to it.

Mr. Van De Wiele asked Mr. Reed to state his hardship for going from 32 square feet to 56 square feet, or in this case going from 40 square feet to 56 square feet. Mr. Reed stated there is a large pine tree about 60 feet tall just west of the sign, and the church nor the sign can be seen.

Ms. Ross asked Mr. Reed about the plan depicting 25 feet in height. Mr. Reed stated the plan was formatted for the last Board meeting, and at that meeting the Board informed him that he lowered the sign to an overall height of 20 feet there would be no need for a Special Exception or a Variance.

Ms. Back asked Mr. Reed if he had prepared a new exhibit for today's meeting. Mr. Reed stated that he had not.

Mr. Van De Wiele asked Mr. Reed how tall the existing sign is. Mr. Reed stated it is 10 feet overall height currently.

Mr. Flanagan asked Mr. Reed if that was 10 feet from the concrete or 10 feet from the base. Mr. Reed stated that it is measured from the concrete.

Mr. Reed stated that the new sign will have diffusers across the LEDs, so the light will not protrude straight outward, but deflect it downward. Therefore, the sign does not come into clear view until a person is within 15 or 20 feet.

Mr. Van De Wiele asked if the time restriction in the Code would only apply to the dynamic display. Ms. Moyer answered affirmatively.

Ms. Back asked Mr. Reed if the LEDs are shielded and they cannot be seen until you are almost on top of them, why is there a hardship needed from a pine tree that is blocking the sign. Mr. Reed stated people would not be able to see the top part of the sign. Mr. Reed stated people cannot even see the church until they get past the pine tree.

Mr. Van De Wiele stated the Board is only looking at allowing a dynamic display; 24 feet more than what is permitted but only 16 feet more than what exists.

Ms. Miller asked for clarification of the second Variance to increase the permitted display area of the dynamic display, so the dynamic display must be limited to 32 square feet and the other portion is the 24 feet. Is that how that Variance goes away? Ms. Ross stated the dynamic display area is 32 square feet because it is 4 x 8 but then add the 3 x 8 on the top the display area goes to 56 square feet.

Mr. Van De Wiele asked Ms. Miller if there was only a Special Exception to allow the dynamic display, is it limited to something different than the overall? If there was 80 square feet of sign allowance and received the Special Exception can there be an 80-foot dynamic display or is it a separate measurement from the overall sign limitation. Ms. Miller stated that it is a separate measurement from the overall sign limitation. That is why the applicant is requesting two Variances.

Interested Parties:

There were no interested parties present.

Comments and Questions:

Mr. Bond stated that he does not see the pine tree, that is not on church property and is more than 75 meters away, being a hardship for seeing a sign more than a couple hundred feet out based on the level obscurity in other similar cases. There was a church located on Harvard that had a similar issue with trees, and the Board did not think that it was appropriate in that case and he does not think it is appropriate in this case. Mr. Bond stated that he does not have a problem with the dynamic display, but he does with the height.

Ms. Ross stated that it seems like the sign is large for the building. She has a little problem with the sign being located within a residential district, but she could get around that if the sign were the right size. The dynamic display is the right size but adding the additional signage on top makes it a rather large monument.

Ms. Back stated that she does not have a problem with the church having a dynamic display sign, but she does have a problem with it exceeding the allowed square footage.

Board Action:

On **MOTION** of **BACK**, the Board voted 5-0-0 (Back, Bond, Flanagan, Ross, Van De Wiele "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a **Special Exception** to allow a dynamic display sign in a R zoned District; **DENY** a Variance to increase the permitted display area of a dynamic display sign from 32 square feet to 50 square feet; **APPROVE** a Variance to increase the permitted display area of a freestanding sign from 32 square feet to 40 square feet; **DENY** a Variance to increase the permitted height of a sign in an R district from 20 feet to 25 feet (Section 60.050). The Board finds the hardship to be the replacement of an existing sign with new sign components, and there is 40 square feet already established. There are no conceptual plans for this project as no new plans were submitted. The sign is to be in the same location per dimensions specified in this motion. The height is not to exceed 20 feet. The Board finds that the requested Special Exception will be in harmony with the spirit and intent of the Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. The Board finds that the following facts, favorable to the property owner, have been established:

- a. That the physical surroundings, shape, or topographical conditions of the subject property would result in unnecessary hardships or practical difficulties for the property owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;
- b. That literal enforcement of the subject zoning code provision is not necessary to achieve the provision's intended purpose;
- c. That the conditions leading to the need of the requested variance are unique to the subject property and not applicable, generally, to other property within the same zoning classification;
- d. That the alleged practical difficulty or unnecessary hardship was not created or self-imposed by the current property owner;
- e. That the variance to be granted is the minimum variance that will afford relief;

- f. That the variance to be granted will not alter the essential character of the neighborhood in which the subject property is located, nor substantially or permanently impair use or development of adjacent property; and
- g. That the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of this zoning code or the comprehensive plan; for the following property:

LTS 13 THRU 16 & PRT VAC STREET & ALLEY BEG SWC LT 13 TH W20 N155 E120 S10 W100 S145 POB BLK 12, YARGEE ADDN, City of Tulsa, Tulsa County, State of Oklahoma

NEW APPLICATIONS

22384—Martha Thomas

Action Requested:

Special Exception to allow a manufactured home on an RS-3 zoned lot; Special Exception to extend the time limit to allow a manufactured home on the site permanently (Sections 5.020 and 40.120). **LOCATION:** SW/c of East 29th Street North & North Atlanta Avenue **(CD 1)**

Presentation:

Martha Thomas, 2820 North Atlanta Avenue, Tulsa, OK; stated the requested Special Exceptions are so she can live in a manufactured home.

Mr. Van De Wiele asked Ms. Thomas if she appeared before the Board in 2012, or was it someone else? Ms. Thomas stated that it was she that appeared before the Board in 2012.

Mr. Van De Wiele stated that approval expired in 2016, and asked Ms. Thomas if she was now seeking to allow the manufactured home permanently. Ms. Thomas stated the manufactured home is a new home. Mr. Van De Wiele asked Ms. Thomas if it is different than the one approved in 2012. Ms. Thomas answered affirmatively. MR. Van De Wiele asked Ms. Thomas the year of the manufactured home that is now on the subject property. Ms. Thomas stated it is a 2016 model.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **BACK**, the Board voted 5-0-0 (Back, Bond, Flanagan, Ross, Van De Wiele "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Special Exception to allow a manufactured home on an RS-3 zoned lot; Special Exception to extend the time limit to allow a manufactured home on the site for 15 years from today's date, January 23, 2018 (Sections 5.020 and 40.120). The approval is subject to conceptual photo on page 4.8 in the agenda packet. The Board finds that the requested Special Exceptions will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; for the following property:

LT 1 BLK 4, THE BEN C FRANKLIN ADDN, City of Tulsa, Tulsa County, State of Oklahoma

22386—Craig Hoster

Action Requested:

Appeal of the Development Administrators determination (Section 70.140).

LOCATION: 2251 South Rockford Avenue East **(CD 4)**

Mr. Van De Wiele announced typically in appeals the Board hears first from the administrator that made the decision and then the applicant will be allowed to come forward to discuss his appeal of the decision.

Mr. Van De Wiele asked Ms. Blank to explain what the appeal is. Ms. Blank stated that Mr. Hoster is concerned about the lot to the north of his property. In 2016 the subject property was before the Board for a Variance which was granted for moving the driveway. In December Mr. Hoster requested an administrative determination, whether the plans that were approved by the Building Permit Department for a new house on the subject property were consistent with site plan submitted to the Board of Adjustment in 2016. Mr. Ho who is in the Building Permit Department responded by saying that according to the field measurements provided by the owner's surveyor the approved construction plans and permits, and the actual construction are consistent with the conceptual plans submitted to the Board of Adjustment. Mr. Hoster has appealed this determination by Mr. Ho.

Mr. Van De Wiele asked Ms. Blank if it was the determination of consistency. Ms. Blank answered affirmatively.

Presentation:

Yuen Ho, City of Tulsa, Development Administrator, 175 East 2nd Street, Tulsa, OK; stated that in October 2016 the developer for the subject property, 2251 South Rockford, came before the Board of Adjustment asking for an adjustment of the driveway to be north of the property. That was approved by the Board, case #BOA-

22150. On October 26th the developer went to INCOG for an Administrative Adjustment from the lot line, from 30 feet to 25 feet, and it was approved. Plans were submitted and filed with the City of Tulsa Permit Office on July 5, 2017. The plan that is before the Board is the “as built” survey provided by the builder. The plans that were submitted for approval depicts the front setback of the building was 25 feet; the building also showed that the southeast corner of the building is 8’-2” from the south lot line which is the common lot line with the appellant’s property. The property is zoned RS-2 and per Table 53 the side lot line requirement is a minimum of five feet. Staff looked at the plans that were submitted showing 8’-2” distance between the structure and the side lot line, and it was deemed to be compliant with the Code. As to the north property, that was adjusted for a driveway in the front, that was approved by the Board of Adjustment and the Land Use Administrator. Finding that everything was compliant with the Code and consistent with the conceptual plan staff approved the permit, and the permit was issued August 18, 2017, Permit #425844. The survey shows the front of the structure that has been constructed on the site to date, being 25 feet to the north side and 25.1 feet which is consistent with the approval that generally shows 25 feet. As to the south side of the structure, the plans shows 8.2 at the southwest corner of the building, whereas the approved depicts 8’-2” at the southeast corner of the building. There is a bump out that is shown on the site plan and the bump out was to be 2.3 feet, so essentially the building is to be 5.9 feet from the side lot line, and that again is outside the five-foot setback.

Mr. Van De Wiele asked Mr. Ho if the distance of 8.2 feet is not at the narrowest point of the bump out but is at the farthest west point of the house. Mr. Ho answered affirmatively. Mr. Van De Wiele asked Mr. Ho if the bump out were measured it would be a little over two feet closer to the appellant’s house. Mr. Ho answered affirmatively. Mr. Van De Wiele asked Mr. Ho if that would still make the side lot line farther than the five that is required under the Code. Mr. Ho answered affirmatively.

Mr. Ho stated the plan shows the bump out to be at 2’-4”, which basically is 2.33 feet. Take 2.3 feet away from the 8.2 feet, the distance between the edge of the bump out to the south lot line is 5.9 feet which exceeds the side five-foot setback in Table 53. It is consistent with the conceptual plan. It is definitely compliant with the limitations of the Zoning Code. Mr. Ho stated he does not see an issue with this.

Mr. Van De Wiele asked Mr. Ho if exhibit 5.11 in the agenda packet is what is under construction, and if exhibit 5.8 in the agenda packet is what was presented to this Board for the driveway issue on the north side and to INCOG for the front lot line adjustment, is what is being compared to see if those two things are consistent with one another. Mr. Ho stated that the adjustment that came before the Board in 2016 was a Variance on the north lot line as to the driveway, so what happens on the south side is not germane to what City staff was looking at because that was the crux of the Board of Adjustment case #BOA-22150. The front setback as depicted on the conceptual plan was withdrawn on October 25th, case #BOA-22150, but approved the next date of October 26th by an Administrative Adjustment.

Mr. Van De Wiele asked Mr. Ho if the Administrative Adjustment had some conceptual site plan language that refers to the exhibit being seen now. Mr. Ho answered affirmatively. Mr. Ho stated the discussion with the appellant was consistency for the south lot line as far as the setback. Mr. Ho stated the plan submitted to the Board depicted an 8'-2" distance on the southeast corner, and site plan submitted depicts 8.2 on the southwest corner and the bump out is in a different location than what is on the survey. Mr. Ho stated that is conceptual plan and it conceptually did not affect the encroachment into the south setback. Mr. Ho stated that he finds this to be consistent.

Mr. Van De Wiele stated the plan that was provided the Board and to INCOG showed a house that was about 3,200 square feet, and now that house which is being built is a 5,000 square foot house. Mr. Van De Wiele asked Mr. Ho to explain the difference, and how does it weave into the consistency of the plan issue. Mr. Ho stated that he does not recall discussing the area or size of the house, but when the City staff looks at a submittal they look at what is proposed for the area and if it complies with the Code requirements; meets the open space requirements. Staff would approve it if it is compliant. If a conceptual plan depicts a smaller house than what is subsequently proposed, staff would look at that as a conceptual plan. A house could vary in area and size as long as it is still compliant with the Zoning Code.

Mr. Van De Wiele asked Mr. Ho if the Board action approved something on a conceptual plan, and the conceptual plan said it is a 1,200 square foot house and the plan that the City receives is an 8,000 square foot house, those can be deemed consistent with one another as long as neither are violating a setback or an open area calculation. Mr. Ho stated that if the area of the house is not the subject of the reviewed action he will say it is consistent.

Craig Hoster, 2255 South Rockford Avenue, Tulsa, OK; stated he has lived in his house for over 40 years. Mr. Hoster stated that the Zoning Code and the Board of Adjustment encourage neighborhood conversations, and to try to resolve issues. He thought the issue before the Board today was resolved at the juncture. Mr. Hoster stated that he lives immediately south of the subject property and shared a driveway. As a result of the shared driveway the house was farther than five feet from his house; probably about ten feet away. He and Mr. Mantooth discussed the moving of the driveway, and Mr. Hoster stated he told Mr. Mantooth no objection to that, but he his preference would be to keep it on the same side. Mr. Hoster stated he told Mr. Mantooth that his two main concerns were the house being built not be any closer to his house than the house that was razed, and the house being built not be any closer to the street, so his view of Woodward Park would not be blocked. Mr. Hoster stated that Mr. Mantooth asked him to write a letter approving the plans that had been reviewed on multiple occasions, and that the house would be approximately 3,200 square feet. The permit that is filed with the City is in excess of 5,000 square feet. The house clearly does not fit in with the neighborhood. Mr. Hoster presented exhibits to the Board for reference to his opposition. Mr. Hoster stated that Mr. Mantooth e-mailed him on October 3, 2016 stating that there would be approximately ten feet on the south side of the house to his driveway and sent a copy of a drawing. That drawing did not show any

bump out. Mr. Hoster stated that his discussions and the e-mail represented a promise that the proposed house would not be any closer than the former house that had been razed. Mr. Hoster stated that he and his wife wrote a letter to the Board of Adjustment referring to a ten-foot green area between his lot and the subject property as the new structure will be approximately in the same location as was the former house, which was told to him by Mr. Mantooth on more than one occasion. These neighborhood discussions and communications are part of the procedures, as he understands it, is set forth in Section 70.010E. That section states that neighborhood communications are encouraged by the Board of Adjustment to educate applicants and neighbors about one another's interests and resolve issues in a manner that respects those interests. Mr. Hoster stated that he thought the issue of how close the house has been resolved based upon the neighborhood communications and the plan that he had seen not showing the bump out encroaching on the eight feet. Mr. Hoster stated the original site plan had a small parking area, and he discussed that with Mr. Mantooth and his attorney. They told him they were not going to put anything there so the site plan was changed to eliminate the parking area. The site plan that was submitted to the Board of Adjustment clearly shows there is not bump out or bay window. Mr. Hoster stated that a detailed site plan is required by the Board for every application for a Variance, and the Zoning Code also requires a site plan. INCOG's website even talks about the Board of Adjustment residential site plan review, which emphasizes to the public and the builders, that the Board of Adjustment requires a detailed site plan with all applications for a Variance of the Zoning Code. The website states the site plan is to depict all lot dimensions, including the building or improvements foot print. The site plan is also to show the distance of any building or improvement from relative property lines. The site plan attached to Variance requests should clearly illustrate all required dimensions along with the proposed dimensions. Mr. Hoster stated that means to him that when this Board considers Variances, they are interested in reviewing the site plan because they are not just approving a Variance, but it has to go with the overall scheme of things. Mr. Hoster stated he assumes there are a lot of things considered for a Variance other than just being granted; the site plan is something that was mentioned in the Board's minutes and by the Administrator. The Variance that was approved by the Administrator had one condition, the approval is per the attached conceptual plan. The other Variance was approved by the Board pursuant to a motion and it had two conditions. One condition was subject to the conceptual plan submitted today and the second condition was that the approval was subject to the recording of the driveway agreement. The Zoning Code in Sections 70.010 and 70.130 gives the Board authority and power to place conditions the approval of Variances. Mr. Hoster stated there was an agreement among the neighbors as to how far the house was going to be from his house, the site plan that was submitted to the Board was consistent with that, and he thought everything had been taken care of. The problem was, that several months later the builder did not use the same site plan that had been approved by the Board. Mr. Hoster stated that in his opinion the builder made material changes which affects him. Mr. Hoster stated that when he examined Mr. Ho's files there was a site plan depicting a bump out on the southwest corner, and that is the first time the bump out appears. Mr. Hoster respectively suggested that the site plan is inconsistent.

Mr. Flanagan asked Mr. Hoster if the Mantooth residence is encroaching on his property. Mr. Hoster answered no. Mr. Flanagan asked Mr. Hoster if the Mantooth's were breaking any easements, Zoning Codes, or is anything being violated. Mr. Hoster stated that he thinks the Mantooth's are violating the order of the Board because the building being constructed is not consistent with the site plan that was approved by the Board along with the Variances. Mr. Hoster stated that what the Mantooth's did, and what Mr. Ho allowed them to do, was take advantage of the Variances. Mr. Flanagan asked Mr. Hoster if the revised site plan was violating any easements, Zoning Codes or encroaching on his property. Mr. Hoster stated that it is encroaching on the agreement that he had with the Mantooth's. Mr. Flanagan asked if it was violating any City Zoning Codes. Mr. Hoster stated that he is not expert in that and does not know particular zoning codes, so he is uncertain. Mr. Hoster stated that it does not make any difference as far as his argument, because the crux of his argument is that this was an agreement that was made with the neighborhood. The condition of the Variances is that the house be not within eight feet of his house. So, there is a violation.

Mr. Van De Wiele asked Mr. Hoster about the site plan Mr. Mantooth e-mailed to him, which was provided before the letter of support. That plan shows an eight-foot side yard so, at this point he knew they were planning on eight feet. Mr. Hoster stated that their agreement was that the house would not be any closer to his house than the previous house was razed. Mr. Hoster stated that he thought Mr. Mantooth had determined that the previous house was only eight feet away, and Mr. Hoster admitted that he had not measured the distance. Mr. Hoster stated that what he can tell the Board is that there was a driveway between the previous house and his property line, and now he cannot drive a car through there. Mr. Van De Wiele stated that his point was that before Mr. Hoster wrote his letter of support he knew that there was a plan of eight feet, so what we are getting to is the bump out. Mr. Hoster agreed.

Ms. Ross stated that even if the original site plan had shown the bump out, it is her understanding that the Mantooth's would not have been required to seek any Variance or any Special Exception for that because it fell behind the five feet setback line. So, it is not something the Board would have decided even had it been brought before the Board, because no Special Exception or Variance was needed. Ms. Ross stated that it sounds like there was more of a private agreement that was not adhered to, and she understands that. She too would not like someone being that close to her house, but unfortunately the Zoning Code allows a five-foot setback.

Mr. Van De Wiele stated that to Mr. Hoster's point, he would not have provided a letter of support. Mr. Hoster agreed with Mr. Van De Wiele. Mr. Hoster stated that if the bump out had been on the site plan he would have protested. The bump out places the house closer to him and he is protesting that. Mr. Hoster stated that he assumes the Board requires a detailed site plan that sets out the footprint of the house. The Board approved the Variance per the conceptual plan submitted.

Mr. Flanagan stated that the amended site plan that shows the bump out was turned into the Permit Office. Mr. Flanagan stated that he thinks the Mantooth's and the

builder's communication with Mr. Hoster has gone above and beyond anything that was owed. Mr. Hoster stated that is not right. Mr. Hoster stated the Zoning Code encourages neighborhood discussions, and it also says the neighborhood discussions are to resolve issues, so they do not need to come to the Board with an appeal.

Ms. Ross stated the Board does not design or build houses, but they make sure they are within the Zoning Code ordinances and things that are set forth. If the applicant had wanted a three-foot setback then he would have had to request a Variance for that for consideration from the Board. Mr. Hoster stated that if that is the case the Board should not have said that the Variances were granted per the conceptual plan submitted.

Mr. Van De Wiele stated that in some instances the Board approves items "per plan" which is a level of exactness that is now wanted by Mr. Hoster. When the Board gives the language of "per conceptual plan", it is less exact than what Mr. Hoster is seeking.

Mr. Hoster stated that what he is seeking, not only in this case but in cases in the future, builders and developers submit a site plan to the Board after telling the surrounding property owners that the proposed structure will be built a certain way, so the neighborhood will not protest. He thinks the Board of Adjustment and the neighborhood needs to put the builder's feet to the fire.

Ms. Ross stated that if a Variance had been sought for the bump out, if it had been needed, the Board would have examined that, but the applicant did not need a Variance for that. The applicant did not need Board permission to build the bump out because they were already granted permission per the Code. When the Board relies on a conceptual site plan to approve a Variance, the Board is only relying on for purposes of the Variance requested. In this case, there was no Variance requested for a bump because there was no Variance needed.

Mr. Hoster asked why the Board requires a detailed site plan. Mr. Van De Wiele stated that the two requests that were made, the one the Board ultimately heard and ruled upon was related to the driveway on the north side. Therefore, the Board needed a site plan to see where the driveway was going to be placed and where the easement was going to be located. It was more of a north edge of the house issue. If the applicant had drawn a straight line and took all five feet across the front, then it would be a question of whether INCOG would have granted that Administrative Variance. How ultimately has it damaged the property with the bump out moving to the west? Mr. Van De Wiele stated he wants to understand ultimately what the complaint is.

Mr. Hoster stated that ultimately the complaint is the increased size of the bump out and the location of the bump out significantly and substantially impairs his property, both in terms of use and value. As compared to the former structure, his view of Woodward Park from his dining room windows is reduced. The view of the park is also reduced from his upstairs bedroom in the northwest corner of the house. The view from the dining room is impacted by having a new structure several feet closer to his home which is contrary.

Mr. Bond asked Mr. Hoster to articulate a legal right that he has to a view; in the State of Oklahoma does a person have a right to a view? Mr. Hoster stated that he was asked if the bump out impairs the use or value of his property, and he is trying to answer that question. Mr. Hoster stated that his answer is yes. Mr. Hoster stated there are also other reasons for his concern. The location of the bump out is worse for the value of his house than a bay window farther back on the subject house. That house will appear, from the street, to be much closer. This becomes even more important when the subject house is bigger and closer to the street than the houses on either side of the subject house. Therefore, it dominates the immediate area. The large bump out at the southwest corner exacerbates this dominance resulting in a reduced evaluation of his house. If the Board does not care about the site plan, then why is it required for every Variance? He is asking to get rid of the bump out on the southwest corner.

Mr. Van De Wiele stated that he does not want to argue the view issue because there is no legally protected right to a view, but if the bump out were just a 90-degree corner and 8.2 feet from the property line how much more of the view is the bump out blocking than if it were not there. Mr. Van De Wiele stated this is not as impactful then if it were a square corner bump out. Mr. Hoster admitted that a square corner would block his view more. Mr. Van De Wiele asked Mr. Hoster if the complaint was the bump out or the corner of the house. Mr. Hoster stated the bump out is going to make quite a bit of difference as you drive down the street. When a person sees the bump out and the giant house, how close it is to his house people will say there is another house that they can purchase.

Mr. Van De Wiele asked Mr. Hoster to explain his last two exhibits to the Board, and then the Board will hear from the homeowner, and informed Mr. Hoster that he will have a chance for rebuttal.

Mr. Hoster stated that he believes the Permit Office erred. Mr. Hoster believes no one in permitting made sure that the site plan submitted to the department was the same plan as the Board relied on to grant the Variances. The site plan submitted for the building permit is not consistent with the site plan submitted for the Variances. Mr. Hoster stated that he brought that difference to the attention of the department. Section 70.100B2, states that administrative adjustment procedures may not be used to vary, modify, or otherwise override a condition of approval or requirement imposed by an authorized decision-making body. Mr. Hoster believes that is one area where they erred, because they varied, modified or otherwise overrode a condition of the Board's approval and the Administrator's approval. If the builder wanted to change the site plan there is a procedure in the Zoning Code, Section 70.130A, but they did not do that. This Board has the authority under Section 70.140G, if it chooses to do so, to affirm or reverse wholly or in part or modify the decision being appealed. Mr. Hoster asked the Board take whatever action is necessary to amend the building or construction permit to conform with the site plan submitted to the Board of Adjustment to obtain the Variances, and to require the owners and the designer/builder to remove from their design and to not build any portion of the new structure that is closer than eight feet from his property

line. In particular, to remove any construction of the bump out or bay window from the southwest corner of the new house. Will the Board allow builders to tell the neighbors whatever they want to say and work out any arrangement with the neighbors, then come to the Board of Adjustment with a site plan then submit a different site plan to the Permit Office to build something different? That results in chaos. The neighbors rely on the Board to enforce the agreements, otherwise, there is chaos and the neighbors lose confidence in the government and the builders.

Ms. Ross stated the Board does not have the authority to govern a builder's design standards, if they are within the setback lines and they come before the Board for requested Special Exceptions and/or Variances. In this case, the builder is well within their allotted area and the Board has no authority to tell the builder he cannot build the bump out. Mr. Hoster respectively disagreed. Ms. Ross stated believes the confusion in this matter is that Mr. Hoster is looking at a site plan and thinking the Board is approving the design on the plan and that it has to be exactly that. That is not what the Board is approving. The Board looks at the site plan specifically to see how the Variances will lay out with the plan. If the builder were to change driveway and it was different than what was submitted to the Board that would be a problem, because the Board approved the Variance for the driveway as conditioned on the site plan. That is the difference. The Board is not approving the whole design. The Board asks for a site plan, so they can see how the Variances they are requesting are going to impact the entire building site.

Interested Parties:

Chip Atkins, 1638 East 17th Place, Tulsa, OK; stated he was in a Board meeting a few weeks ago and the windows on a house were being discussed. At that meeting there was an applicant who wanted an easement on a piece of property to build closer to the property line. In that case the Chairman told the applicant that they had to match the siding and materials on the house. The applicant asked Ms. Miller if that was permissible. Ms. Miller replied that there is something in the ordinance stating that the Board can do that. Mr. Atkins stated he was shocked to hear that because as a preservationist he thought the only governing body that could do that was the Tulsa Preservation Commission. So, there is something in the ordinance that the Board did do several months ago on this that pertained to changing or adding to a person's requirement to match the siding and materials on the house.

Ms. Ross stated that in that case the Board was dealing with the Tulsa Preservation Commission. Mr. Atkins stated that the Board was not because it is an East Tulsa house.

Mr. Van De Wiele stated the Board can certainly make conditions, and the break down seems to be whether or not the Board would have in this case. Mr. Van De Wiele stated that Mr. Atkins is abundantly correct, that if someone requested a Special Exception or a Variance the Board can say they approve it on the condition that the applicant do "x". Those conditions are a tool at the Board's disposal, and the question

is whether or not the Board would have done that here. Mr. Atkins agreed and stated this was beyond the addition, it was to match what was on the house.

Mr. Atkins stated that when he comes in he is at the mercy of the Board of Adjustment to approve plans per what the Board says is going to be presented at the meeting. Mr. Atkins come to the Board to look at plans that are presented and hopes they will be the same plans that go to the City. In this case that is not what happened because a bump out appeared after the Board approved a plan. Mr. Atkins thinks it is more of a procedure issue that the plans do not come back to the Board because they approve something per conceptual plan. Something gets lost when it goes from INCOG to the City of Tulsa the communication somehow gets lost. He has seen it repeatedly with other projects, even in his neighborhood. Mr. Van De Wiele stated that he understands Mr. Atkins concern. Mr. Van De Wiele stated that he has been on the Board of Adjustment several years, and when he first started serving on the Board the practice was a hard "per plan" requirement. His understanding is that the Board was finding that when it was to the point of receiving a building permit, if something changed by an inch it was getting kicked back from the Building Permit Office saying the plan was approved "per plan" and this is not the per plan. The builder would then come back to the Board with final plans to receive approval. There was an administrative bog down in that process. The idea of a conceptual plan to give some guidance was then the way most things get approved. If the applicant clearly has a final plan the Board still occasionally will approve a project "per plan", but most of what the Board does is a "per conceptual plan" basis. The Board may need to have a work session internally to see if that needs to be changed and give a more exactness level to an approval. But in this specific instance Mr. Van De Wiele believes the Board is being asked is the final permit plan consistent with the plan the applicant brought to the meeting in October 2016. Mr. Atkins agreed.

Mr. Atkins stated that it may be within the applicant's right because everything they are doing is within the Code, but there was an agreement between the home owners and the owner. That is something that needs to be looked at procedurally, because the permitting office does not always know what happened at the meeting. That should be placed in the notes better and if they were we would not be here today.

Mr. Van De Wiele stated there may also be a question of a private agreement or grievance that is outside the purview. If the Board does not know about something a person cannot come before the Board with that complaint. The Board has placed conditions on approvals regarding fences, landscaping, who is going to install them, who is going to maintain them, etc. Mr. Van De Wiele told Mr. Atkins that his comment is understood and appreciated, and the Board can certainly look at that to see if there is a break down and if so how it is best fixed.

Mr. Bond stated that he thinks the idea of a conceptual plan is great because the Board sees all the time plans by people who are economically disadvantaged and are trying to make their home a better place. Those people deserve just as much right to be heard and considered as someone that afford to spend a \$100,000 on a zoning issue case.

Mr. Bond stated that he has no problem with the conceptual plans, he thinks they are great. This body is open to everyone in Tulsa irrespective of the architect or lawyer.

Mr. Van De Wiele stated that anybody that deals in any type of real estate development, there is a process. A person does not hire the interior decorator before receiving a Variance.

Mr. Flanagan stated the builder is not obligated to give a neighbor a site plan or to even speak to a neighbor, so the fact that the builder went out of their way to do that he thinks it is a good thing.

Jane Webster, 2235 South Rockford, Tulsa, OK; stated her parents bought the house in 1949 so she knows the neighborhood well.

Ms. Ross asked Ms. Webster where her house is located in relation to the one being built. Ms. Webster stated there are two houses in between.

Ms. Webster stated she cares about neighborhoods, and Preserve Mid-Town is a very fine organization. She believes in keeping neighborhoods beautiful. The reason the Mantooth's bought into the neighborhood is because it is beautiful. People do look at the park, it is incredibly important to the street. The street is only one block long and faces the park. The houses are all in a line and everyone is like one big family. Ms. Webster stated she is the President of the neighborhood association, and her advice from the City of Tulsa is that neighborhood associations are very important so when issues like this come up the neighborhood residents can be heard as a group. Unanimously, at the meeting that was held the neighbors voted to support Mr. and Mrs. Hoster in what is presenting at today's meeting. Ms. Webster stated that she or any of the neighbors were not notified about the process of the Variance that happened in 2016.

Mr. Van De Wiele stated that if anyone's house is within 300 feet of the subject property there would have been a notice received.

Ms. Miller stated that the file is not at this meeting today, but there is a list of people that were notified, and she offered to let Ms. Webster see the list. Ms. Webster stated that she has seen the list and stated she is on the list twice, once as the neighborhood President and the neighbor. Ms. Webster stated that she never received a notice. Ms. Webster stated there should be a "check and balance system" in place so that it would not happen. Ms. Moye stated she verified with Ms. Webster that her name is on the mailing list, but once it is mailed she is not sure where the piece of mail went.

Ms. Webster quoted the mission statement from TMAPC. Mr. Van De Wiele stated that this is not the Planning Commission and the mission statement is not substantially different from the Board. Ms. Webster asked Mr. Van De Wiele what the Board of Adjustment's mission statement is. Mr. Van De Wiele stated if there is a mission

statement it would be on the same website as the TMAPC mission statement, but he is not sure about it.

Lou Reynolds, Eller & Detrich, 2727 East 21st Street, Tulsa, OK; stated he represents the Mantooth's whose house is the subject of this appeal. As to whether the administrative official erred in determining whether the conceptual site plan and the actual construction are consistent. The Code Official did not err. The house meets all the required dimensions of the Zoning Code, as well as the previous Administrative and Board relief. The conceptual site plan was requested for the relief at the time along the north side of the property for the driveway easement and the west side. It exactly meets those and comes very close to those details. There was a survey completed at the request of the City after Mr. Hoster's complaint was received. Those plans are also very consistent with one another and confirm that the house meets all the Code standards.

Rebuttal:

Craig Hoster came forward and stated this is the first time he has appeared before the Board of Adjustment and has learned a lot. One of the things he learned is how binding the site plans are. As a person who reads the regulations, the Zoning Code as well as the procedures for a residential Variance indicate that the site plans are required to be very detailed and set out the footprint of the house. The Board requires a detailed site plan and what he hears the site plan does not make that much difference in receiving approval for a Variance. Mr. Hoster wonders why a detailed site plan is required. Mr. Hoster stated the general public believes that when a site plan is submitted that is the site plan that the house will be. If a builder is going to use the Variances that have been granted they need to be bound by the site plan. Contrary to what several of the members have said, the Zoning Code, the website and the regulations give's an entirely different story of what the effect the site plan is. Mr. Hoster stated that he believes that if his appealed denied and nothing more is done it sets a dangerous precedent. Because owners will come and say anything to the Board of Adjustment to get what they want. Mr. Hoster stated that he does not think that Mr. Ho or his department made an error in judgement, he believes that fault is when the builder submitted an entirely different site plan to receive the permit. That is what he is appealing, in his opinion that should have been turned down. Mr. Hoster would still ask the Board to consider this, get rid of the bump out and send a message to everyone that when they submit a site plan they have to comply with what was submitted.

Comments and Questions:

Ms. Back stated the conceptual plan changed because the building officials were having a difficult time getting permits through the process. At that time, it was looked up on how the Board can better serve the community as a whole it was decided to have approval on "conceptual plan". It is not carte blanche, it is not something allowing the builder to do whatever they want to do, they still must abide by the Zoning Code "bulk and area" requirements. That is where if something should happen during construction and they hit bedrock and must move a bump out, they can move the bump out. The bump out is still there, it still had the setback, but it was there for a reason. That is why

the “conceptual plan” was implemented. Ms. Back stated the plan that the Board was shown showed the eight-foot setback, but it also showed a bump out. That bump out was less than eight feet, and that was on the plan that Mr. Hoster agreed he saw. It is unfortunate that the bump out moved to the southwest corner and it was not communicated to Mr. Hoster that the bump out was being moved, but that is more of a civil matter than it is a Board matter because they were meeting Code. Ms. Back stated the footprint of the house is shown on the site plan. Staff does a very good job of taking in plans for the Board and they make sure all the dimensions are there. Ms. Back stated that she would be more disappointed that the house went from a 3,000 square foot house to more than 5,000 square feet, but yet they still meet the zoning code. Ms. Back does believe the City Official complied with what was submitted. She does believe that they worked within what they had. There was a bump out, the bump out moved and did not go farther into the area. The building is still eight feet away. The bump out was shown. So, she cannot support the appeal.

Mr. Van De Wiele stated that his thoughts are the same as Ms. Back. The notion of conceptual plan is just that. To the average person it is a concept, it is not exact. If the Board wants to put a “per plan” requirement the Board has that leeway and they do use it occasionally. Mr. Van De Wiele stated that when looks at Plan A and Plan B, the garage has moved a little, the stair stepping of the rear home line is a little different, the shape of the courtyard is a little different, the front stoop is a little different, and the bump out is a little different. But overall the notion of the appeal is exactly that, as to whether or not the permitting department erred in determining the two plans are consistent with one another. He does not see that. He does not see an inconsistency. They do appear to be consistent. Mr. Van De Wiele stated his sense is that the new house may be closer to the south than the old house, but he thinks that is the source of the issue. The reality is that the southwest corner of the subject house did not change. But to Mr. Ho’s point, the southwest corner of this house was not something the Board was considering for the driveway on the north side of the property. Mr. Van De Wiele stated he does find the plans to be consistent with one another and would support a denial of the appeal.

Mr. Bond stated that he firmly believes the Board of Adjustment is not the playground for affluent developers and every Tulsan has the right to be here. Not every Tulsan can afford an exact and specific site plan, nor can developers be expected to make one that will be 100% adhered to. He thinks this appeal boils down to one thing, and that is that someone’s view has been interrupted. Whether or not the view being interrupted somehow causes a decrease in value and the use of the adjoining property have not even been addressed. Mr. Hoster has stated a claim that the Board cannot grant relief from.

Board Action:

On **MOTION** of **BOND**, the Board voted 5-0-0 (Back, Bond, Flanagan, Ross, Van De Wiele "aye"; no "nays"; no "abstentions"; none absent) to **DENY** the Appeal of the Development Administrators determination (Section 70.140); for the following property:

S1/2 LT 8 ALL LT 9 BK 3, TERWILLEGGER HGTS, City of Tulsa, Tulsa County, State of Oklahoma

22388—Peter Grant

Action Requested:

Variance to reduce the interior setbacks of a detached accessory building; Variance of the minimum open space requirement on a RS-3 zoned lot; Variance to allow more than 30% coverage in the rear setback area to permit a detached accessory building in the rear yard (Sections 5.030 and 90.090). **LOCATION:** 1743 South Yorktown Avenue East (CD 4)

Ms. Miller left the meeting at 3:25 P.M.

Presentation:

Peter Grant, 2845 South Florence Avenue, Tulsa, OK; stated the request is for Variances for the replacement of a garage located in a historical neighborhood, Yorktown District. The hardship is that the property's physical limitations do not provide for building to current setbacks in the Zoning Code. The new garage will use the same footings and when the garage was originally built the footings were very close to the property line. On the east side there is 24" and the south side has 18". If the garage were to be moved it would be on top of the house and the car could not be navigated into the garage.

Ms. Miller re-entered the meeting at 3:27 P.M.

Mr. Van De Wiele asked Mr. Grant if the new garage is to be the same size as the previous garage. Mr. Grant stated that it will be about 18" wider but will be the same depth. Mr. Van De Wiele asked Mr. Grant if the extra width would make the garage closer to the house or closer to the rear lot line. Mr. Grant stated the garage will be closer to the center of the property. Mr. Van De Wiele asked Mr. Grant about the height of the new garage. Mr. Grant stated the height will remain the same; the new garage will be a duplication of the old garage.

Mr. Van De Wiele asked Mr. Grant why the old garage was needing to be replaced. Mr. Grant stated the old garage is deteriorated and leaning.

Ms. Back asked Mr. Grant if he had spoke with the Preservation Commission about the project. Mr. Grant answered affirmatively and stated that he had staff approval for the new garage. Ms. Back asked if the Board had received a copy of the staff approval.

Mr. Grant answered no. Mr. Grant stated that he sits on that commission, but he was called and told there was nothing necessary.

Ms. Miller asked Mr. Grant if he was saying it was not required to have approval. Mr. Grant answered affirmatively.

Interested Parties:

Chip Atkins, 1638 East 17th Place, Tulsa, OK; stated he has a house located at 2212 East 18th Street, which is down the street from the subject project. Mr. Atkins encouraged the Board to approve this project, because there will be a lot more of these projects coming before the Board because of the age of the neighborhood and the age of the garages.

Comments and Questions:

None.

Board Action:

On **MOTION** of **FLANAGAN**, the Board voted 5-0-0 (Back, Bond, Flanagan, Ross, Van De Wiele "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Variance to reduce the interior setbacks of a detached accessory building from three feet to one foot; Variance of the minimum open space requirement on a RS-3 zoned lot from 4,000 square feet to 3,438 square feet; Variance to allow more than 30% coverage in the rear setback area to permit a detached accessory building in the rear yard (Sections 5.030 and 90.090), subject to conceptual plan 7.7 of the agenda packet. The Board has found the hardship to be that the current garage is deteriorating and has reached its lifeline. The materials of the newly constructed garage are to be in harmony with the existing home. The Board finds that the following facts, favorable to the property owner, have been established:

- a. That the physical surroundings, shape, or topographical conditions of the subject property would result in unnecessary hardships or practical difficulties for the property owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;
- b. That literal enforcement of the subject zoning code provision is not necessary to achieve the provision's intended purpose;
- c. That the conditions leading to the need of the requested variance are unique to the subject property and not applicable, generally, to other property within the same zoning classification;
- d. That the alleged practical difficulty or unnecessary hardship was not created or self-imposed by the current property owner;
- e. That the variance to be granted is the minimum variance that will afford relief;
- f. That the variance to be granted will not alter the essential character of the neighborhood in which the subject property is located, nor substantially or permanently impair use or development of adjacent property; and
- g. That the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of this zoning code or the comprehensive plan; for the following property:

LT 11 BLK 2, WOODWARD PARK ADDN, City of Tulsa, Tulsa County, State of Oklahoma

OTHER BUSINESS

None.

NEW BUSINESS

None.

BOARD MEMBER COMMENTS

Mr. Van De Wiele thinks the Board should have a work session discussing the terminology “conceptual plan” and how that term is being relayed and transmitted to the Building Permit Office staff. Ms. Miller believes that Mr. Ho should be in attendance also. Mr. Van De Wiele agreed.

There being no further business, the meeting adjourned at 3:35 p.m.

Date approved: _____

Chair