

BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1274
Tuesday, June 8, 2021, 1:00 p.m.
Tulsa City Council Chambers
One Technology Center
175 East 2nd Street

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	OTHERS PRESENT
Bond, Chair Radney, Secretary Barrientos Brown		Wilkerson Chapman Sparger	Swiney, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on June 4, 2021, at 9:45 p.m., as well as at the Office of INCOG, 2 West Second Street, Suite 800.

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

Mr. Chapman read the rules and procedures for the Board of Adjustment Public Hearing.

The City Board of Adjustment was held by videoconferencing and teleconferencing via **GoToMeeting**, an online meeting and web conferencing tool. Members of the public will be allowed to attend and participate in the Board of Adjustment's meeting via videoconferencing and teleconferencing by joining from a computer, tablet or smartphone using the following link:

<https://www.gotomeet.me/CityOfTulsa2/boa-gotomeeting-in-council-chambers-june-8th>

The Board members and staff members attending in person are as follows:

Mr. Austin Bond, Chair
Ms. Burlinda Radney, Secretary
Mr. Tomas Barrientos
Mr. Steve Brown, Board Member
Mr. Mark Swiney, City Legal

Mr. Austin Chapman, Tulsa Planning Office
Mr. Dwayne Wilkerson, Tulsa Planning Office
Ms. Janet Sparger, Tulsa Planning Office

Mr. Bond announced that Ms. Jessica Shelton has resigned from the Board leaving four members on the Board of Adjustment. The Mayor's office is currently working to fill the open seat. The applicant is required to receive three affirmative votes to receive the relief requested, so if there is anyone who wants to continue their case until the fifth member is appointed to the Board a continuance may be requested. No one requested a continuance.

MINUTES

On **MOTION** of **BROWN**, the Board voted 4-0-0 (Barrientos, Bond, Brown, Radney "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the **Minutes** of the May 25, 2021 Board of Adjustment meeting No. 1273.

UNFINISHED BUSINESS

23117—Brett Davis

Action Requested:

Variance of the dustless, all-weather parking surface requirements to allow a gravel driveway (Section 55.090-F). **LOCATION:** 6505 West Edison Street North (CD 1)

Presentation:

Brett Davis, 1191 South Oxford Avenue, Suite 100, Tulsa, OK; stated he represents Birch Company, the General Contractor that constructed the house on the subject property. At the beginning of the project it was difficult to figure out which City would take this application; it was among Osage County, Sand Springs, and the City of Tulsa. It was determined that the City of Tulsa was the responsible party in which to apply. The house sits far back on the subject property of four acres. The approval today would allow the owner to receive the Certificate of Occupancy and move into the house. The property had a gravel entrance and the contractor continued that to the site where the house sits. There are several properties in the area that have gravel drives.

Mr. Bond asked if the drive had gravel that abuts the road or is the entrance paved, the portion between the road and the start of the gravel. Mr. Davis stated that it is an

asphalted road and from the entrance the starts with gravel, and the house is about 700 feet from the road.

Mr. Brown asked Mr. Davis if he was asking for the entire drive to be gravel. Mr. Davis answered affirmatively.

Mr. Barrientos asked Mr. Davis if there were other houses in the area that have gravel drives. Mr. Davis answered affirmatively.

Ms. Radney asked Mr. Davis where does the right-of-way engage with the property line? Mr. Chapman stated there is a small portion, the apron of the driveway, that is inside of the right-of-way, which is typical, but he does not have an exact measurement. Mr. Davis stated that he is not sure, but he would estimate that it is about 25 feet.

Ms. Radney asked Mr. Davis if the other neighbors that have a concrete apron for their drives, would that concrete apron be 20 to 25 feet from the street edge to their property lines? Mr. Davis stated the apron approach on the surrounding properties is gravel, the concreted portion of those driveways is closer to the driveway and the front porch area of the houses. Mr. Davis stated there are no tin horns on any of the properties and the subject property is the only property on the north side of Edison.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION of RADNEY**, the Board voted 4-0-0 (Barrientos, Bond, Brown, Radney "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Variance of the dustless, all-weather parking surface requirements to allow a gravel driveway (Section 55.090-F). The Board has found the hardship to be that the new house is constructed in agricultural setting, and it sits back far from the road, and it is customary in the neighborhood for the driveways to have gravel. The area that is within the City's right-of-way, between the property line and the start of Edison, be paved with a durable dustless surface. The applicant is to obtain a construction permit for work inside the right-of-way as a condition to this approval. In granting the Variance 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:

31-20-12 BEG SE/C LOT 5-N 377.5' TO NE/C LOT 5-W 457.73'-S 390.10' TO S LN LOT 5-E 460' TO BEG, City of Tulsa, Tulsa County, State of Oklahoma

NEW APPLICATIONS

23130—Josh Wyrick

Action Requested:

Variance of the 1,000-foot spacing requirement for a medical marijuana dispensary from another medical marijuana dispensary (Section 40.225-D). **LOCATION:** 3314 South Peoria Avenue East (CD 9)

Presentation:

Josh Wyrick, 1620 South Florence Avenue, Tulsa, OK; stated he knows he is within 1,000 feet of another dispensary. Due to his past projects he has had to be ADA compliant, and the Fire Marshal has visited his site for the final inspection. The other dispensary is on a second floor and has no access to an elevator or stairs, so is he asking for a Variance to give the community in Brookside a dispensary that they can access.

Mr. Bond asked Mr. Wyrick if that is his hardship. Mr. Wyrick answered affirmatively.

Mr. Brown asked Mr. Wyrick what he means by “ADA compliant”. Mr. Wyrick stated that when he set up past dispensaries there were multiple things he had to accomplish. Mr. Brown asked Mr. Wyrick to state what he means in this case. Mr. Wyrick stated the other dispensary within the 1,000-foot radius is on the second floor with no access.

Ms. Radney asked Mr. Wyrick to explain his logic in choosing the subject location. Mr. Wyrick stated that he knows the landlord and the building has been empty for almost a year with nothing there. When he chose the site, it is because it is a great site and there are many things that can be opened at that location, but he knows the medical marijuana dispensary business because it is the fourth dispensary he has opened. In

this part of the City everything around the site is housing and there is only one dispensary in the area.

Mr. Barrientos asked Mr. Wyrick if he knew there was another dispensary within 1,000 feet of the site chosen. Mr. Wyrick answered affirmatively.

Mr. Bond asked Mr. Wyrick if he knew that the other dispensary was 369 feet away. Mr. Wyrick answered affirmatively.

Ms. Radney asked Mr. Wyrick how close the next dispensary is located from the subject site. Mr. Wyrick stated that it is three miles to the south, and there is another dispensary three miles to the north.

Interested Parties:

Carolyn Gartside, 1245 East 30th Place, Tulsa, OK; stated she owns the Crow Creek Building, it is a commercial property north of the subject property. There is no parking in the area. The coffee shop and the Mexican restaurant are very busy businesses, and there is not enough parking in the area for the employees of the business establishments let alone customers. She receives calls from her tenants because they cannot find a parking space at the building where they are paying rent because outside parties are parking there. She has tried to be lenient and not have anyone towed, but now that the businesses are opening again there is no parking in the area.

Ronald Durbin, 1602 South Main Street, Tulsa, OK; stated he is an attorney. and it is weird to be standing before the Board in opposition of a marijuana business. He advocates for marijuana businesses every day and he is here in opposition of the subject dispensary. In November 2019 when the City Council and the City of Tulsa passed the 1,000-foot ordinance he fought hard against that rule, and he was wrong then. The Board was right, the City Council was right and INCOG was right to have the 1,000-foot rule. Because of the 1,000-foot rule Tulsa has not ended up like Oklahoma City where there are three or four dispensaries in the same shopping center. The applicant in this instance is seeking a Variance based on the condition of another property which is not before the Board today. Those issues are not before the Board today. If the applicant wants to assume and argue about ADA compliance, the other building could not have a drive-thru because of the City of Tulsa had an ordinance that prohibited a drive-thru until recently. The other building is currently remodeling the building to allow for handicap access. The other dispensary has a care giver program that allows people who are handicapped to have a care giver to facilitate that type of situation. That is not the issue that is before the Board today, the applicant is here on whether the subject property the requirements of a Variance. He has told prospective dispensary owners that they cannot open a dispensary at the location they have chosen because he can read the seven requirements for a Variance and understands those requirements and apply them to situations. There are instances that the 1,000-foot rule can be forgiven because of accessibility. This area is not an area that should have exceptions granted because if this property is granted an exception, then he does not know what the standard is any longer. If this request and the other dispensary request

on the agenda today is granted, then there simply is no standard any longer. There is nothing unique about the subject property that makes it need a dispensary. The subject property has plenty of other economic opportunities that it can engage in; it is a high retail area that has clothing facilities and other shops, and restaurants. There is nothing unique about the subject property. This property has been used for other economic endeavors and can be used for other economic endeavors. The proponent has said he can use the subject site for other things, but he knows the dispensary industry. Those words, of himself, take him out of these exceptions because he must meet them all and he clearly laid out that the subject property can be used for other economic endeavors. Since the applicant has said that there is no evidence that he meets any of the seven requirements and he asks the Board not to grant this request and uphold the standards set forth.

Ms. Radney asked Mr. Durbin that the Board is charged with approving the measurement between dispensaries, so to what degree should the Board take into consideration that the other business that is being spaced from has limited access to the public. Mr. Durbin stated the Board shouldn't, because the law does not allow the Board to factor in those considerations. If the Board looks at the seven elements the lack of access by the public is not something that is to be considered in this manner. If the Board is going to consider that then they would need to provide every single potential business owner that wants to open a dispensary an opportunity to come before the Board asking for a Variance using the argument that some dispensary does not provide some service that is of value to somebody, somewhere, in some way.

Ms. Radney asked Mr. Durbin if it was common for a dispensary to be located on a second floor without accessibility. Mr. Durbin answered no stating that the other dispensary that exists was unable to change until the City approved the drive-thru ordinance. Again, that should be irrelevant because the subject property is under discussion and being looked at only. The standard is not a balancing of the equities related to the situation in the neighborhood, the elements are what they are. Unfortunately, he does not think the Board is allowed to take those things into account and in this instance, it is not something that the law allows the Board to look at. The Code is not simply to discourage oversaturation for purposes of providing a spread out of the businesses, there were a multitude of factors that went into the rationale in proposing the 1,000-foot spacing and the City was correct in doing it.

Erin Thayer, 1127 South Evanston Avenue, Tulsa, OK; stated she is the lessor of the subject site in Brookside. She rented the space knowing the other dispensary was upstairs over The Brook. She leased the space knowing that she would need to come before the Board and request the Variance. Her decision was based entirely on the fact that it is a huge area that is not being serviced for the handicapped community. The area has a six-mile radius without another dispensary located in it and the area is in no danger of being oversaturated.

Ms. Radney asked Ms. Thayer if she were unable to locate another space in the area, she is interested in that would have been appropriate for a dispensary? Ms. Thayer

stated she looked for about five months and when she discovered that the other dispensary did not have an access point for the handicapped, she did not think it was fair because it is medicinal and became an issue for her.

Ms. Radney asked Ms. Thayer what steps would be necessary to have someone else purchase medical marijuana for another party. Ms. Thayer stated that person would need to obtain a care giver license.

Ms. Radney asked Ms. Thayer if she had other dispensaries. Ms. Thayer stated she did, but she has sold them. Ms. Radney asked Ms. Thayer what portion of her business was care giver purchases. Ms. Thayer care giver purchases was very, very little.

Mr. Barrientos asked Ms. Thayer if the patients could go to another dispensary to purchase their products? Ms. Thayer answered affirmatively but they would have to drive to that dispensary.

Ms. Radney asked Ms. Thayer if there were a reason a person would patronize a particular dispensary for the marijuana product. Ms. Thayer it is dependent upon which company the patient wants to purchase from, anybody is able to access anything.

Carolyn Gartside came forward and stated that she does not know where the people are going to park because there are only five spaces in the front.

Rebuttal:

Josh Wyrick came forward and stated as for the parking in Brookside, that goes with any business in the area. The customers for the dispensary would be five-to-ten-minute customers while the restaurant customers are 1-1/2 to 2 hours customers taking up parking spaces. He would really like to have access for the handicapped people.

Comments and Questions:

Mr. Bond stated the Board is very much the process that INCOG and Development Office went through to craft the zoning regulation. The Board was included in a way that they had not been included before and it was appreciated by the Board. The Board has denied requests in the past because they have stuck to the hard and fast rules. The only hardships the Board has granted has been based on some sort of confusion with the City, and he has significant concerns over a dispensary that is 369 feet apart from another dispensary. The Board is not in the business of determining whether a business is or is not ADA compliant.

Mr. Barrientos agreed with Mr. Bond and stated he does not understand the applicant's hardship.

Mr. Brown stated he likes the idea of having an accessible dispensary, but he sees no proof that the space is accessible. Until space details are provided, he is reluctant to grant a Variance.

Ms. Radney stated she appreciates the need to have an accessible space and she is surprised that the other dispensary is so inaccessible. She concurs with the other members of the Board that 369 feet is too close, and she does not see a hardship.

Board Action:

On **MOTION** of **RADNEY**, the Board voted 4-0-0 (Barrientos, Bond, Brown, Radney "aye"; no "nays"; no "abstentions"; none absent) to **DENY** the request for a Variance of the 1,000-foot spacing requirement for a medical marijuana dispensary from another medical marijuana dispensary (Section 40.225-D); for the following property:

W.150 OF LT 9 BK 1, PEEBLES ADDN, City of Tulsa, Tulsa County, State of Oklahoma

23131—Salomon Dionicio

Action Requested:

Special Exception to increase the permitted driveway width in a residential district (Section 55.090-F.3). **LOCATION:** 1240 South 101st East Avenue (**CD 5**)

Presentation:

Salomon Dionicio, 1240 South 101st East Avenue, Tulsa, OK; stated he upgraded his driveway after recently purchasing the house. Originally the driveway was 33 feet wide and the gravel that had been laid down by the City in the one-foot area they owned was mismatched with the driveway and the driveway was cracked. When he purchased the house there was an oversized shed next to the garage and it was rotten, so he had to remove it. He would like to erect a second garage in that area and would like to have a 45-foot driveway so he can access the second garage.

Mr. Bond asked Mr. Dionicio if he had spoken with his neighbors. Mr. Dionicio answered affirmatively stating that no one had any objections.

Interested Parties:

There were no interested parties present.

Comments and Questions:

Mr. Brown stated this is an improvement to the property and aids in the plans for a future garage so he will support this request.

Mr. Barrientos agreed with Mr. Brown.

Board Action:

On **MOTION** of **RADNEY**, the Board voted 4-0-0 (Barrientos, Bond, Brown, Radney "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Special Exception to increase the permitted driveway width in a residential district (Section 55.090-F.3), subject to conceptual plans 4.4, 4.7 and 4.8 of the agenda packet. The

applicant is to obtain a construction permit for work inside the right-of-way to ensure that the driveway is built in compliance with all other City specifications. 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; for the following property:

E215 LT 5 BLK 2, ARCH FEARS ADDN, City of Tulsa, Tulsa County, State of Oklahoma

23132—Gregg Iser

Action Requested:

Special Exception to permit a medical marijuana growing operation (Horticulture Nursery Use) in the CG District (Section 15.020, Table 15-2). **LOCATION:** 14303 East 21st Street South (**CD 6**)

Presentation:

Gregg Iser, 1209 South Frankfort, Tulsa, OK; stated the property zoning has been changed on the subject property.

Mr. Bond asked Mr. Iser if he had spoken to any of the neighbors. Mr. Iser answered affirmatively stating that he has been speaking with the neighbors directly behind the property for about 60 days and he has mailed notices to the neighbors.

Mr. Brown stated that this is a grow facility and asked if the neighbors had any concerns about odors. Mr. Iser answered no stating that there will be special carbon filtration systems installed placed in every room and there will be no smells.

Mr. Brown asked Mr. Iser if he would have any customers. Mr. Iser answered no stating that there will be just staff at the site.

Mr. Brown asked Mr. Iser how much of the building will be utilized by the grow operation. Mr. Iser stated the building is 45,000 square feet and right now he is going to use 30,000 square feet.

Ms. Radney asked Mr. Iser if he would be fencing around the perimeter of the property. Mr. Iser stated that he would like to, but he also needs to speak to the tenant next to him because there is a mutually shared access to the parking lot. But he would like to be able to fence about 30 feet out from the building.

Ms. Radney asked Mr. Iser how he contacted the neighbors. Mr. Iser stated that he knocked on doors or speaking to the people that were out in their yards. Ms. Radney asked how many people did he contact? Mr. Iser stated that he contacted six people. Ms. Radney asked if they were owner occupied. Mr. Iser answered affirmatively.

Ms. Radney asked Mr. Iser if the subject grow facility was on the larger side of the industry. Mr. Iser stated that this facility is considered to be on the medium to larger size of grow facilities.

Mr. Bond asked Mr. Iser how many employees he would have. Mr. Iser stated that he would have 20 or less because everything will be automated.

Ms. Radney asked if there would be any signage on the property. Mr. Iser stated there is a sign on the property, but the plans are not to have any name on the building for now.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **RADNEY**, the Board voted 4-0-0 (Barrientos, Bond, Brown, Radney "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Special Exception to permit a medical marijuana growing operation (Horticulture Nursery Use) in the CG District (Section 15.020, Table 15-2), subject to conceptual plans 5.18, 5.19 and 5.20 of the agenda packet. The applicant is to install a carbon filtration system for odor containment. There is a time limit of two years, June 8, 2023, on this approval. 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; for the following property:

PRT LT 1 BEG 952.98E NWC LT 1 TH E203.26 S281.82 E92.38 S318.71 W336.53 N153.58 W38 N210.27 E78.29 N236.89 POB BLK 1, EASTLAND PLAZA, City of Tulsa, Tulsa County, State of Oklahoma

23133—Matthew Zalk

Action Requested:

Variance of the 25-foot street setback and the 20-foot rear setback in an RS-3 District (Section 5.030-A, Table 5-3). **LOCATION:** 1623 North Atlanta Avenue East (CD 3)

Presentation:

Matthew Zalk, 110 South Hartford, Suite 2502, Tulsa, OK; stated the property is currently vacant and is zoned as an RS-3 lot. Generally an RS-3 lot is at least 50 feet wide by 120 feet in depth, but this lot is peculiar and unusual. This request will fill a missing niche of middle-income affordable housing in the neighborhood. He has not heard any objections from the neighbors.

Mr. Brown asked if the house would be a pre-manufactured house. Mr. Zalk stated the house is being manufactured in Indiana and will be placed on a stem wall permanently.

Mr. Barrientos asked Mr. Zalk what kind of materials will be used to build the house. Mr. Zalk stated the house will look like a vinyl sided single family house, no one will be able to tell that it is pre-manufactured.

Mr. Brown asked Mr. Zalk if he would be installing a sidewalk. Mr. Zalk stated that he will install a driveway and install a sidewalk to the driveway with front landscaping.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **BARRIENTOS**, the Board voted 3-0-1 (Barrientos, Bond, Brown "aye"; no "nays"; Radney "abstaining"; none absent) to **APPROVE** the request for a Variance of the 25-foot street setback and the 20-foot rear setback in an RS-3 District (Section 5.030-A, Table 5-3), subject to conceptual plans 6.10, 6.11, 6.12, 6.13, 6.14, 6.15, and 6.16 of the agenda packet. The Board finds the hardship to be that the lot predates the Comprehensive Zoning Plan and is already in non-conformity with existing standards. In granting the Variance 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 611 BK 47, TULSA HGTS, City of Tulsa, Osage County, State of Oklahoma

23134—Connoisseur Cannabis, LLC

Action Requested:

Variance of the 1,000-foot spacing requirement for a medical marijuana dispensary from another medical marijuana dispensary (Section 40.225-D). **LOCATION:** 7033 South Memorial Drive East, Suite J **(CD 7)**

Presentation:

Trevor Henson, 110 West 7th Street, Tulsa, OK; stated there is a lawsuit pending that has led to a general agreement that a Variance would be sought from the Board of Adjustment subsequent to the filing of the lawsuit in Tulsa County. Exhibits have been provided related to the lawsuit that ultimately shows that in December 2020, Connoisseur Cannabis went through the necessary steps with the City of Tulsa to receive approval and receive a Certificate of Occupancy and a permit and went through all the necessary steps with the medical marijuana authority to acquire a license. The issuance of the license occurred December 16, 2020 and the inspection was December 14, 2020. His client proceeded to open their business prior to April 20, 2021. The City of Tulsa informed his client that the Certificate of Occupancy had been vacated by a previous party. E-mail correspondence has been provided and it sets out starting on December 11, 2020.

Mr. Bond asked Mr. Henson who applied for the Certificate of Occupancy. Mr. Henson stated that it was Connoisseur Cannabis stating that the oddity is that there was a previous dispensary in the subject location. That dispensary vacated December 1, 2020. Connoisseur had a contingent lease agreement with the landlord pursuant to the passing of an inspection and proceed with operating at the location. On April 14, 2021, the City informed Connoisseur that the Certificate of Occupancy had been removed. the City of Tulsa accepted Connoisseur's check for not only the Certificate of Occupancy permit but the transfer of the Certificate of Occupancy. The issue now is that there is another dispensary that seeks to open less than 1,000 feet away. That dispensary had purportedly sought to purchase the right to terminate the previous Certificate of Occupancy at the subject location. There is a lawsuit now pending against the City of Tulsa and his client by the other group that seeks to open the other dispensary. The objections files are in part the exhibits that are filed in the lawsuit by the opposite dispensary. He believes that there is a collection of record keeping mistakes, either by the City or failure to communicate properly, because the City ultimately allowed for two Certificates of Occupancy to exist within a 1,000 feet of one another for two marijuana dispensaries. Mr. Henson stated that it is his understanding that the other dispensary is not licensed through OMMA, and he believes it is the basis for which they are lobbying their objections. The lawsuit is still pending, and the City of Tulsa reached a general agreement that if his client would seek a Variance that it would render his issues moot if the Variance were granted. Within the subject sites zip code there are at least 16 other dispensaries and there is one within the same Woodland Hills parking lot that is the Dr. Z Dispensary. Mr. Henson stated that the seven different standards and requirements

set out in the Code for approval of a Variance all exist here based on the arguments made earlier. There is a distinction of what is sold at his client's dispensary versus what is sold elsewhere.

Mr. Bond asked Mr. Henson when the Certificate of Occupancy for the other dispensary was approved. A female in the audience stated that it was 2019.

Mr. Henson stated that in 2019 at the location of the Paragon Dispensary there was still another dispensary within a 1,000 feet.

Ms. Radney asked Mr. Henson if he knew whether Paragon was grandfathered in under the old ruling. Mr. Henson stated that he did not believe so and Paragon is not open and still under construction as a month ago.

Ms. Radney asked Mr. Henson if Paragon has conducted a transaction. Mr. Henson stated that Paragon has not.

Ms. Radney asked Mr. Henson if there was a Certificate of Occupancy for a dispensary that was operating and conducting business located at 7033 South Memorial. Mr. Henson answered affirmatively stating that that Certificate of Occupancy was not terminated until February by the previous owner.

Mr. Bond asked Mr. Henson if he had a potential settlement that has been approved by a District Court pending this relief from the Board of Adjustment or is it a private settlement? Mr. Henson stated there are two pending lawsuits; one that his client filed is for a temporary restraining order and seeking declaratory relief against the City of Tulsa. The declaratory relief that is being sought is the approval of the previous Certificate of Occupancy that was approved in December.

Mr. Bond asked if this is still a matter pending in District Court. Mr. Henson answered affirmatively stating that if this Board grants the requested Variance, it renders his claims against the City of Tulsa moot and necessitate a dismissal. There is a motion to dismiss that was denied, but the request there is from Paragon where they are seeking the City of Tulsa to be restrained from allowing for a Variance and the operation of the subject dispensary because it violates the 1,000-foot spacing.

Mr. Brown left the meeting at 2:56 P.M.

Interested Parties:

Ronald Durbin, 1602 South Main Street, Tulsa, OK; stated he before the Board on behalf of other clients that are in protest of this, one of which is a marijuana client and one of which is a property client. On November 28, 2018 is when the City Council and the City of Tulsa first adopted the zoning ordinance. The City of Tulsa adopted the

1,000-foot rule and it is an important rule. He believes Dr. Z's dispensary is within 1,000 feet and it conflicts with the request and has the right to protest.

Mr. Brown re-entered the meeting at 2:58 P.M.

Ms. Radney asked Mr. Durbin how far the Dr. Z dispensary is from the Connoisseur dispensary. Mr. Durbin stated that it is not far and described the areas both dispensaries are located. The other dispensary bought the other dispensary license to get around the 1,000-foot rule which is the appropriate manner to handle this type of situation. Whether the City of Tulsa made a mistake in this and whether the legal department is to blame that is not an element that is to be decided here, that is an element that is appropriately before the judicial court. That is the entity that will decide whether the City of Tulsa properly issued a permit, that is not something this Board is to even consider. This Board is to consider whether there was an existing COO and COO for another dispensary that was within 1,000 feet and if so, does the new applicant meet the requirements for a Variance. The elements for a Variance are clearly laid out and the property does not meet any of the subject characteristics. If the Board grants the new interloping dispensary the relief being requested the Board is essentially penalizing somebody who has been substantial to buy the existing license so they could operate there legally inside the City of Tulsa's 1,000-foot rule. People need to check things and it is clear that the applicant did not check OMMA records and clearly did not ask the City of Tulsa if the prior existing COO was related so the applicant does not come the Board with clean hands. The Board is not to consider whether the City of Tulsa screwed up and he would agree that in some regard the City of Tulsa screwed up. The clients he represents do not want another dispensary in the area because there are plenty already in the area. There are no unique characteristics that render it useless for other economic endeavors it is a shopping center.

Ms. Radney asked Mr. Durbin if Dr. Z has a Certificate of Occupancy and an OMMA license. Mr. Durbin answered affirmatively. Ms. Radney asked Mr. Durbin if Paragon has a Certificate of Occupancy and an OMMA license. Mr. Durbin stated Paragon does not have a license. Mr. Durbin stated that Dr. Z has been operating since about 2018. Mr. Durbin stated that if the dispensary owner had done their work before hand and hired legal counsel, they would have figured all of this out. This is their fault for doing their due diligence. It is their problem for not going through the necessary steps that other businesses have done.

Ms. Radney stated that she does not think a license can be bought and she asked Mr. Durbin if he is actually saying the business was bought. Mr. Durbin stated that is a tricky question. Transferability of licenses is now a thing. Senate Bill 1033 passed two weeks ago and that allows for transferability of licenses.

Mr. Bond asked Mr. Durbin what the effective date on SB1033 is. Mr. Durbin stated that it was an emergency clause effective immediately. This was not in effect in December;

however, a license is not transferable but the business that holds the license is transferable. That is an area of the law that is grey, but the license was transferred by transferring the ownership of the business which is allowed under the existing law. The Certificate of Occupancy is issued to the business, it is not issued to an individual or owner so the business owns the license and can do with it as it pleases.

Jacki Loney, 8320 East 71st Street, Tulsa, OK; stated she represents B & E Paragon and their members, and she objects to the Variance request because she represents the competing business located at 8320 East 71st Street. Her clients worked with the City and before any money was invested there was discussion with the City and took the necessary steps. The City provided a plan and helped her client work through it. Connoisseur Cannabis came in and usurped the plan. Her clients looked at a location, the former Village Inn, and decided the location would not work because of Southside being within 1,000 feet. Southside was owned by S & S Organics, and they were fully licensed, and they started business before the 1,000-foot spacing rule became effective. Her client saw an opportunity to purchase S & S Organics business and it was the only way to secure the 1,000-foot spacing ordinance. Under that purchase her client kept one of the owners and added to the Paragon business so they could maintain the ownership. OMMA will allow the change of ownership of a business that owns a license as long as 100% of the business is not changed. As part of the purchase of S & S Organics the new owners received the space, which is Suite J where Connoisseur is located, received the lease and the right to terminate it, they received the OMMA license, they received the OBDD license, and all other permits that had been issued including the Certificate of Occupancy and the Certificate of Compliance. The purchase contract was signed and consummated in December 2020.

Mr. Bond asked Ms. Loney if the Certificate of Occupancy would transfer from one location to another location, Suite J to the new location. Ms. Loney answered no and stated that to do the transfer her client maintained the southside location, Suite J, until March 31, 2021. When Connoisseur received a Certificate of Compliance her client held a then valid lease on the property, a Certificate of Occupancy on the property, and an OMMA license and an OBDD license. She does not think it is the City that is to blame, she thinks Connoisseur knew her client was there because the lease they provided has two discrepancies. The Certificate of Compliance and the lease is actually for Suite B not Suite J.

Mr. Bond asked Ms. Loney if it was the same physical location. Ms. Loney answered no and stated that Suite J is in the center of the strip mall and Suite B is on the end, so they are different units in the shopping center.

Ms. Loney stated that when Connoisseur was issued the Certificate of Compliance her client's things were still in the suite and one of the owners was called because the alarm went off when the inspection was being performed. Ms. Loney stated that Bob Reavis and Reavis Realty is the owner of the building.

In December, her client was told by the City to cancel the Certificate of Occupancy that they had been issued to S & S Organics. The City then said they needed a proof of purchase and need an affidavit from the President of S & S Organics stating that it was okay to cancel. So, the COO was cancelled for that location and that also cancelled the Certificate of Compliance. The COO was cancelled as a part of the procedure that the City laid out so the zoning could be moved across the street. Ms. Loney stated that when she saw a posting about Connoisseur opening, she contacted Mr. Henson and he told her that he had made a deal with the City that Connoisseur could seek a Variance.

Ms. Radney asked Ms. Loney if Paragon had a license prior to buying the business. Ms. Loney stated that Paragon did not, S & S Organics did. Ms. Radney stated that in other words Paragon does not actually have a license currently other than they purchased access to one. Ms. Loney stated that the S & S Organics license expired in February; Paragon does not have a license because the Certificate of Occupancy was just received yesterday and that is part of the application that OMMA requires, but the Certificate of Compliance has been granted.

Ryan Kuzmic, 1602 South Main Street, Tulsa, OK; stated he is a zoning specialist and legal assistant. He stated that 8320, the new and current location for Paragon, now possesses a COO and a COC from the City. They are also the only entity in this entire situation that has continuity of permitting and coverage because they purchased Southside and at the time of purchase part of the arrangement was that they would obtain a new ZCO, and the new location would instantaneously switch. They are the only entity that has continuity of coverage. They passed finals for the CO on the week of the 25th, they passed the final on the COC on Friday, and it was issued yesterday.

Ms. Radney asked Mr. Kuzmic if he had a Certificate of Occupancy. Mr. Kuzmic stated that the City is not able to issue those currently, but they are issuing letters that states things need to be rectified when the system comes back online, and he also has the COC which is the step after the COO.

Ms. Radney asked Mr. Kuzmic about being within 1,000 feet of Dr. Z. Mr. Kuzmic stated that the Southside Dispensary predated the 1,000-foot requirement, so Southside and Dr. Z existed within 1,000 feet of each other predating the ordinance. Southside's license was transferred to Paragon and changed addresses.

Mr. Bond asked Mr. Kuzmic if the Certificate of Occupancy was transferred. Ms. Kuzmic stated the Certificate of Occupancy stays with the building, but it was transferred to the new ownership group, and at the discussion with City Legal in early 2021, at their direction, they structured the deal where his clients would purchase Southside extinguish the COO and obtain a ZCO then would extinguish and issue at the same time for continuity of coverage at the new location. They inherited the OMMA license and extinguished that, they obtained the ZCO, went through the building permit, obtained CO final and have a COC now at 8320.

Ms. Radney asked if 8320 is farther than 1,000 feet from Dr. Z. Mr. Kuzmic answered affirmatively. Ms. Radney asked Mr. Kuzmic if the only thing that would be within 1,000 feet would be the 7033 South Memorial location. Mr. Kuzmic answered affirmatively.

Mark Swiney stated that he needs to provide the Board some legal advice. The mission of the Board of Adjustment is to consider and decide Variances. The lawsuit that is under discussion, and he is not in the litigation division of the Legal Department so he cannot comment on it and wouldn't, the Certificates of Occupancy are issued by a different department of the City, not by the Board and not by the Legal Department. The licenses issued by the State of Oklahoma by OMMA are not before the Board of Adjustment and they are not anything that the Legal Department can rule on. He would urge the Board to narrow their focus and to decide only the question that is before them, the question of the Variance. These different parties have to take care of their own business, they have to get their own licenses, they have to get their own certificates, and those cannot be issued or commented on by the Board.

Mr. Bond asked Mr. Swiney if there are pending matters in District Court which would affect the outcome of this case, does the Board have the authority to decide this case? Mr. Swiney stated the Board can decide the question of and vote on the Variance. If the Board wishes to recuse or continue the case until the outcome of the lawsuit in District Court the Board can do that also. He thinks it is perfectly appropriate to decide the Variance.

Trevor Henson stated that he thinks if the Board fails to render a decision, he thinks that stops the process because there is an exhaustion of administrative remedy requirement for appeal from this Board before the case is taken to the District Court. He would suggest that there has to be a decision. Mr. Henson stated that his client has been operating since April with no issue, problem, or anything other than from this group who is unlicensed per the OMMA. The business records from the City of Tulsa absolutely support everything he has said.

Mark Swiney stated this Board's decision on a Variance has nothing to do with the Certificate of Occupancy. The Board can issue a Variance to a party, and if the applicant does not have the licenses to do what he wants to do he cannot go forward.

Mr. Bond stated the OMMA through about the first year of this would grant a license with or without City approval. So the Board grappled about a year worth of applications on who got there first and who was there. What was settled on by the Board then, was that because the Board is a City body, if there was a Certificate of Occupancy that was granted by the City that is what the Board based their decisions on. So the Board is attempting to have continuity.

Trevor Henson stated this goes beyond the Certificate of Occupancy and the Certificate of Compliance because the City Fire Marshal inspected the property for the OMMA permit which is an obligation prior to acquiring a license. All applicable safety codes of the political sub-division are satisfied which would be the 1,000-foot spacing.

Each dispensary license is specific as to the address for which it is located. The business cannot just be picked up and moved down the street. S & S Organics does not have a current OMMA license, they do not have a Certificate of Occupancy, they do not even function any longer. The opposition is representing Paragon which is an entirely different entity. This is just to confuse the Board.

Ms. Radney asked what the Board is to be measuring from? At this point there is what appears to be an issued Certificate of Occupancy for Paragon located at 8320 location, and there is an applicant stating they have a Certificate of Occupancy and a license for 7033, so is the Board measuring the distance between those two locations and being asked to grant a Variance on?

Jacki Loney came forward and stated her client does not need a Variance because they have already been granted the ZCO. Her client came first, they had the zoning the other dispensary. When the other dispensary applied and received their COC her client had the COO at the very location being discussed, her client had the current occupancy, OMMA license and OBDD. With the agreement with the City her client moved it to the other location.

Ms. Radney stated that she appreciates that but unfortunately for this Board, at the point in time that it was cancelled the Board cannot consider that anymore.

Ms. Loney stated they cancelled it because the City told them that there would be no competing business within 1,000 feet. Her client spent half a million dollars on the reliance of what the City told her client.

Mr. Bond stated the Board is saying that the only basis that can be granted relief for the 1,000-foot spacing has been governmental confusion and the lack of clarity. Ms. Loney stated the confusion was based on fraud. Mr. Bond stated that is the type of finding of fact that this Board has the power to make nor will they. What is before the Board today is whether there was some sort of governmental reliance which caused the issuance of more than one application.

Comments and Questions:

Mr. Bond stated this case is incredibly complicated and this similar to other cases the Board has dealt with, and he is going to follow the advice of the City Legal representative. There are issues here that the Board is not empowered to make a determination on or consider. The only thing that is germane in front of the Board right now and that is relevant is whether they were authorized by the City or OMMA to open. It is ambiguous at best.

Mark Swiney agreed with Mr. Bond and stated that there are a lot of issues that the parties need to resolve, but they cannot be resolved here. The Board of Adjustment does not have the power to resolve them. The only issue before the Board is the Variance.

Mr. Chapman stated that one of the parties mentioned a ZCO and that is a zoning clearance only permit. As a part of any Certificate or building permit there is a zoning review and the issues of spacing, parking, use, etc. is looked at. That was cleared and for the sake of the separation distance that suffices to establish the business and it gives them time until they can receive the building permit and the Certificate of Occupancy.

Ms. Radney asked what the hardship would be for this request. Mr. Bond stated that the reliance on whether it is OMMA or the City, so he thinks this is a governmental reliance and compliance confusion which is the hardship. Although granting requested relief in no way aggregates the decisions in findings of the District Court.

Board Action:

On **MOTION** of **RADNEY**, the Board voted 4-0-0 (Barrientos, Bond, Brown, Radney "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Variance of the 1,000-foot spacing requirement for a medical marijuana dispensary from another medical marijuana dispensary (Section 40.225-D), subject to the conceptual plans 7.7 and 7.8 of the agenda packet. The Board has found the hardship to be the governmental reliance and governmental regulatory confusion. In granting this relief in no way aggregates the decisions and findings of the District Court regarding these matters, present or future. In granting the Variance 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:

PRT SW SW BEG 60N & 60E SWC SW TH E270 N270 W270 S270 POB LESS BEG SWC THEREOF TH N45 SE63.64 S45 POB SEC 1 18 13 1.65AC, City of Tulsa, Tulsa County, State of Oklahoma

Raul Cisneros

Action Requested:

Special Exception to permit a second story addition to a structure with a non-conforming setback (Section 80.030-D), **LOCATION:** 1127 South Norfolk Avenue East (**CD 4**)

Presentation:

Raul Cisneros, 1312 South Garnett Road, Suite E, Tulsa, OK; stated the addition will be a second story and will not extend beyond the existing structure. The house is right on the property line on the north side.

Mr. Bond asked Mr. Cisneros if the house was in a HP district. Mr. Cisneros answered affirmatively. Mr. Bond asked Mr. Cisneros if the Historic Preservation Commission had approved the addition to the house. Mr. Cisneros answered no.

Ms. Radney asked Mr. Cisneros if he had heard any objections from any of the neighbors. Mr. Cisneros answered no stating that the client has told him that he had spoken with a few of the neighbors, and no one objected.

Ms. Radney asked Mr. Cisneros if the house to the south is a two-story house. Mr. Cisneros answered affirmatively. Ms. Radney asked Mr. Cisneros if the house to the north is two-story. Mr. Cisneros stated that it is a one-story house.

Mr. Brown asked Mr. Cisneros where the windows would be located in the addition. Mr. Cisneros stated they would be facing west. Mr. Brown asked Mr. Cisneros if there were any windows facing the neighbor's houses. Mr. Cisneros answered affirmatively.

Mr. Barrientos asked Mr. Cisneros what rooms would be located in the upstairs addition. Mr. Cisneros stated that it will be a bedroom and a bathroom.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **RADNEY**, the Board voted 4-0-0 (Barrientos, Bond, Brown, Radney "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Special Exception to permit a second story addition to a structure with a non-conforming setback (Section 80.030-D), subject to conceptual plans 8.8, 8.9, 8.10, 8.11, 8.12, 8.13, 8.14 and 8.15 of the agenda packet. 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; for the following property:

LT 14 BLK 2, RIDGEWOOD ADDN OF TRACY PARK ADDN, City of Tulsa, Tulsa County, State of Oklahoma

23137—Brent Hynek

Action Requested:

Variance to reduce the required 25-foot rear setback in an RS-2 District (Section 5.030, Table 5-3). **LOCATION:** 3709 East 82nd Place South (**CD 8**)

Presentation:

There were technical difficulties with this case and Mr. Bond moved it to the end of the agenda to allow the applicant time to get reconnected to the meeting.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

No Board action required at this time; for the following property:

LT 27 BLK 4, FOREST CREEK II AMD, City of Tulsa, Tulsa County, State of Oklahoma

23138—Joel Bein

Action Requested:

Variance to increase the number of allowed freestanding or projecting signs on a MX zoned lot with 125-feet of street frontage (Section 60.080-C.2.b). **LOCATION:** 1306 East 11th Street South (**CD 4**)

Presentation:

Joel Bein, 2147 South Sandusky Avenue, Tulsa, OK; stated the Route 66 Commission has signed off on the installation of the proposed sign because it is in the spirit of the revitalization of Route 66 in the area. The building is located right on the corner of 11th and Peoria, and it is the former Corner Café. The building has been split into two sections; one tenant has the west half of the building, and that tenant has installed a sign on the corner and the landlord has installed a sign on the other side that is located on a pole. His client's space is the east half of the building, and the proposed sign would be located

in the middle of the two existing signs. The proposed sign will look like an old 50s style TV set because it fits the era of the old Route 66.

Mr. Brown asked Mr. Bein if there would be any moving parts or video on the proposed sign. Mr. Bein answered no.

Interested Parties:

Peter Janzen, Encinos, 9810 East 58th Street, Tulsa, OK; stated the hardship for this request is the age of the building, it was built in 1935 and there is a concern about the building's masonry. The street the building is located on was very different in 1935 when it was constructed. The setback is much closer than a modern building and current code allows. Mr. Janzen stated that he has heard no objections to the sign.

Comments and Questions:

None.

Board Action:

On **MOTION** of **BROWN**, the Board voted 4-0-0 (Barrientos, Bond, Brown, Radney "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a **Variance** to increase the number of allowed freestanding or projecting signs on a MX zoned lot with 125-feet of street frontage (Section 60.080-C.2.b), subject to conceptual plan 10.12, 10.13, and 10.14 . The Board has found the hardship to be the age of the building and its relationship to Route 66. In granting the Variance 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 45 - 52 LESS N2.5 LT 52 BLK 4, ORCHARD ADDN, City of Tulsa, Tulsa County, State of Oklahoma

Mr. Chapman informed the Board that Mr. Hynek has been able to make reconnection.

23137—Brent Hynek

Action Requested:

Variance to reduce the required 25-foot rear setback in an RS-2 District (Section 5.030, Table 5-3). **LOCATION:** 3709 East 82nd Place South **(CD 8)**

Presentation:

Robert Rymers, 3709 East 82nd Place, Tulsa, OK; stated he would like to replace an existing patio in the rear that needs repair. The replacement will be with vinyl siding and windows. The existing patio is within the rear setback.

Mr. Bond asked Mr. Rymers if he would be extending the patio area. Mr. Rymers answered no stating that due to the grade it would be impossible to extend the concrete patio because it would impede on the water flow from the neighbor's yard.

Ms. Radney asked if the new addition would be a four-season living space. Mr. Rymers stated the room will have windows, but it designed to be outdoor entertainment and he does not anticipate creating a separate living area for four seasons.

Mr. Barrientos asked Mr. Rymers if he would be installing any electrical wiring to the proposed room. Mr. Barrientos stated there is an existing outlet, an existing light socket on the brick face and an existing ceiling fan.

Mr. Bond asked Mr. Rymers if he had spoken with the neighbor to the north. Mr. Rymers answered affirmatively, and he had no objections.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **RADNEY**, the Board voted 4-0-0 (Barrientos, Bond, Brown, Radney "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Variance to reduce the required 25-foot rear setback in an RS-2 District (Section 5.030, Table 5-3), subject to conceptual plans 9.10, 9.11, 9.12, 9.13, 9.14, 9.15, 9.16, 9.17, 9.18, 9.19 and 9.20 of the agenda packet. The Board has found the hardship to be the need for remediation of deferred maintenance of a nonconforming structure that predates the existing Code. In granting the Variance 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 27 BLK 4, FOREST CREEK II AMD, City of Tulsa, Tulsa County, State of Oklahoma

23139—Cameron C. Wallace

Action Requested:

Variance to allow parking inside the City of Tulsa Right-of-Way and within the street setback (Sections 90.090-A & 40.320-B). **LOCATION:** 1347 East 49th Place South (CD 9)

Mr. Bond recused and left the meeting at 4:33 P.M.

Presentation:

Cameron Wallace, 1347 East 49th Place, Tulsa, OK; stated he would like to have parking space off of 49th Street in front of the building for the Church of St. Mary, and the area does impede on the City right-of-way. The additional parking will allow parking for the new building. There is existing parking on the north side of the building. The southern portion of the new building will not always be open and occupied by the same people that will be occupying the northern portion of the building. The new parking will allow for ease of access.

Mr. Brown asked Mr. Wallace to state his hardship for his request. Mr. Wallace stated the hardship is to allow easy access to the building without the need to go through the building by providing closer accessibility to the south side of the building.

Mr. Brown asked Mr. Wallace if he had heard from any of the neighbors. Mr. Wallace stated that he has not heard any complaints from anyone in the neighborhood.

Mr. Chapman stated that he had received a letter of support that came in just before leaving the office for today's meeting.

Mr. Wallace stated that he has received a license agreement signed by the Mayor to allow this and he has also received an approved IDP from the City of Tulsa.

Mark Swiney stated that in cases like this an applicant has to have approval from the Board of Adjustment but also a license agreement from the City. In years gone by it was not known which one to grant first so the Board of Adjustment would often grant the Variance conditioned on the applicant receiving a license agreement. Here the applicant has acquired a license agreement already.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **BROWN**, the Board voted 3-0-1 (Barrientos, Brown, Radney "aye"; no "nays"; Bond "abstaining"; none absent) to **APPROVE** the request for a Variance to allow parking inside the City of Tulsa Right-of-Way and within the street setback (Sections 90.090-A & 40.320-B), subject to the executed license agreement. The Board has found the hardship to be that the existing structure predates the existing Zoning Code. In granting the Variance 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:

Lot 1 Block 1, Church of St. Mary's, City of Tulsa, Tulsa County, State of Oklahoma

Mr. Bond re-entered the meeting at 4:42 P.M.

23140—City of Tulsa – Gary Schellhorn

Action Requested:

Minor Special Exception to modify a previously approved site plan to make improvements to Reed Park (Section 70.120). **LOCATION:** 4233 South Yukon Avenue West **(CD 2)**

Presentation:

Gary Schellhorn, City of Tulsa Engineering, 2317 South Jackson, Tulsa, OK; stated this request is for Reed Park. Reed Park has a recreation center, a swimming pool, a baseball diamond, a splash pad, and playgrounds. The Minor Special Exception is to modify the site plan because in the 2014 Tulsa sales tax the parks were approved and provided funding to replace the swimming pool and splash pad. The last time the site came before the Board of Adjustment it did not have all these amenities on the site plan.

Mr. Brown asked Mr. Schellhorn what was being removed. Mr. Schellhorn stated the swimming pool in its entirety, the splash pad and the bath house are being removed and replaced with new updated equipment and facilities.

Mr. Barrientos asked Mr. Schellhorn if the swimming pool would be the same size when it is replaced. Mr. Schellhorn stated that it would be approximately the same size.

Mr. Brown asked Mr. Schellhorn if the bath house had locker rooms. Mr. Schellhorn answered affirmatively stating there will be showers, restrooms, lifeguard equipment storage, and will be the entry into the swimming pool.

Mr. Brown asked if the bath house would be for pool use only or would it be used for other people in the park. Mr. Schellhorn stated that it is entirely for public use.

Ms. Radney asked Mr. Schellhorn if this request had been taken before the community for their input. Mr. Schellhorn stated the specific public engagement had not been done because what is being is improving what already exists. The existing swimming pool is approximately 50 years old and what is being provided is an up-to-date Code standard and it will have the amenities, i.e., slide, swim lanes which will allow the park to have events and swim lessons. This goes along with the City Parks Master Plan.

Mr. Barrientos asked Mr. Schellhorn what the percentage is for the equipment being improved. The Schellhorn stated the entire swimming pool will be removed, the entire bath house will be removed, and the splash pad will be removed, all of these will be updated and provided with the new Code requirements.

Mr. Brown asked Mr. Schellhorn if there will be any playground equipment that will part of the package. Mr. Schellhorn stated the playground is existing and it is only five years old.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **RADNEY**, the Board voted 4-0-0 (Barrientos, Bond, Brown, Radney "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Minor Special Exception to modify a previously approved site plan to make improvements to Reed Park (Section 70.120), subject to conceptual plans 12.3, 12.5, 12.14 and 12.15 of the agenda packet. 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; for the following property:

BEG 45W & 522.13S NEC NE TH S137.87 E10 S660 W1284.4 N1130 E595 S332.13 E680 POB SEC 27 19 13 28.034ACS, CLINTON HOME ADDN, CLINTON HOMESITES, City of Tulsa, Tulsa County, State of Oklahoma

OTHER BUSINESS

ELECTION OF OFFICERS:

Seats currently held are: Austin Bond – Chair
Burlinda Radney – Vice Chair
Steve Brown – Secretary
Tomas Barrientos
Vacant Seat

On **MOTION** of **BOND**, the Board voted 4-0-0 (Barrientos, Bond, Brown, Radney "aye"; no "nays"; no "abstentions"; none "absent") to **NOMINATE** and **ACCEPT** Mr. Steve Brown as Secretary.

On **MOTION** of **BOND**, the Board voted 4-0-0 (Barrientos, Bond, Brown, Radney "aye"; no "nays"; no "abstentions"; none "absent") to **NOMINATE** and **ACCEPT** Ms. Burlinda Radney as Vice Chair.

On **MOTION** of **RADNEY**, the Board voted 4-0-0 (Barrientos, Bond, Brown, Radney "aye"; no "nays"; no "abstentions"; none "absent") to **NOMINATE** and **ACCEPT** Mr. Austin Bond as Chair.

NEW BUSINESS

None.

BOARD MEMBER COMMENTS

Mr. Bond stated that the Board needs to make the determination whether they will allow post COVID applicants, interested parties to attend the meeting via telephone or the internet even though the Board members are required to attend in person. There will be no vote today, but he would like to hear the members thoughts.

Ms. Radney stated she is in support. She thinks 2020 has taught the public that having these kinds of options makes it possible for more people to participate and she thinks it is good for the Board of Adjustment.

Mr. Brown and Mr. Barrientos agreed with Ms. Radney.

Mr. Bond stated that in the past there has been criticism in the past about people not being able to attend meetings for various reasons. He does know it is an extra task and burden for staff to handle all the requirements for remote meetings, it is appreciated.

Mr. Bond would like to know if, once the criteria is read for a Special Exception or for a Variance, that reading could be waived with the applicant's permission. Then with the consent of the Board have the criteria standards included in the record.

Ms. Radney agreed with Mr. Bond and thinks that suggestion would make the meetings flow better.

Mark Swiney stated that he will discuss that suggestion with his colleagues Ms. Blank and Ms. VanValkenburg, and one of the legal representatives will report back to the Board.

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There being no further business, the meeting adjourned at 4:57 p.m.

Date approved: _____

Chair