

**BOARD OF ADJUSTMENT**  
**MINUTES** of Meeting No. 1280  
Tuesday, September 14, 2021, 1:00 p.m.  
Tulsa City Council Chambers  
One Technology Center  
175 East 2nd Street

<b>MEMBERS PRESENT</b>	<b>MEMBERS ABSENT</b>	<b>STAFF PRESENT</b>	<b>OTHERS PRESENT</b>
Bond, Chair Radney, Vice Chair Brown, Secretary Barrientos Wallace		Wilkerson Chapman Sparger K. Davis	Blank, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on September 9, 2021, at 8:45 a.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.

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

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The City Board of Adjustment was held by videoconferencing and teleconferencing via, an online meeting and web conferencing tool. Members of the public were 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://us02web.zoom.us/j/82839958505> 312-626-6799 Meeting ID: 828 3995 8505

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

Mr. Austin Bond, Chair	Ms. Audrey Blank, City Legal
Ms. Burlinda Radney, Vice Chair	Mr. Dwayne Wilkerson, Tulsa Planning Office
Mr. Steve Brown, Secretary	Mr. Austin Chapman, Tulsa Planning Office
Mr. Tomas Barrientos	Mr. Kendal Davis, Tulsa Planning Office
Mr. Tyler Wallace	Ms. Janet Sparger, Tulsa Planning Office

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**MINUTES**

On **MOTION** of **BROWN**, the Board voted 5-0-0 (Barrientos, Bond, Brown, Radney, Wallace "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the **Minutes** of the August 10, 2021 Board of Adjustment meeting No. 1278.

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**UNFINISHED BUSINESS**

**23167—Louis Fernandez, Jr.**

**Action Requested:**

Appeal of the Administrative Decision issued by a Neighbor Inspector that the subject property is in violation of Sections 45.100 (Home Occupations ) and Section 45.130 (Parking and Storage of Commercial Vehicles) of the zoning codes (Section 70.140). **LOCATION:** 9239 South 86th East Avenue **(CD 7)**

**Presentation:**

The applicant has requested a continuance to September 28, 2021.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **RADNEY**, the Board voted 5-0-0 (Barrientos, Bond, Brown, Radney, Wallace "aye"; no "nays"; no "abstentions"; none absent) to **CONTINUE** the request for an Appeal of the Administrative Decision issued by a Neighbor Inspector that the subject property is in violation of Sections 45.100 (Home Occupations ) and Section 45.130 (Parking and Storage of Commercial Vehicles) of the zoning codes (Section 70.140) to the September 28, 2021 Board of Adjustment meeting; for the following property:

**LT 9 BLK 5, OAK LEAF, City of Tulsa, Tulsa County, State of Oklahoma**

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**NEW APPLICATIONS**

**23182—Jack In The Box – Dawn Bennyhoff & Shaun Steen**

**Action Requested:**

Variance to allow a drive-through facility to be located on the street-facing side of the property (Section 55.100-C. 2); Variance to allow drive-through signs that exceed the maximum area of 36 square feet for the primary signs and 15 square feet for the secondary signs and to allow two secondary drive-through signs (Section 60.030-B.2). **LOCATION:** 8112 East 11th Street South **(CD 5)**

**Presentation:**

The applicant requested a continuance to September 28, 2021.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **RADNEY**, the Board voted 5-0-0 (Barrientos, Bond, Brown, Radney, Wallace "aye"; no "nays"; no "abstentions"; none absent) to **CONTINUE** the request for a Variance to allow a drive-through facility to be located on the street-facing side of the property (Section 55.100-C. 2); Variance to allow drive-through signs that exceed the maximum area of 36 square feet for the primary signs and 15 square feet for the secondary signs and to allow two secondary drive-through signs (Section 60.030-B.2) to the September 28, 2021 Board of Adjustment meeting; for the following property:

**A PART OF LOTS SEVEN (7) AND EIGHT (8), BLOCK TWO (2), AMENDED PLAT OF LOTS ONE (1) TO EIGHT (8) INCLUSIVE, IN BLOCK ONE (1) AND LOTS ONE (1) TO EIGHT (8) INCLUSIVE, BLOCK TWO (2) FOREST ACRES ADDITION TO THE CITY OF TULSA, OKLAHOMA, ACCORDING TO THE RECORDED PLAT NO. 1 063:**

**TRACT A**

**COMMENCING AT THE NORTHEAST CORNER OF LOT 7; THENCE SOUTH 01°17'06" EAST ALONG THE EAST LINE OF LOT 7 A DISTANCE OF 137.47 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 01°17'06" EAST ALONG THE EAST LINE OF LOT 7 A DISTANCE OF 45.00 FEET; THENCE SOUTH 88°44'27" WEST PARALLEL WITH THE SOUTH LINE OF LOT 7 AND LOT 8 A DISTANCE OF 290.04 FEET; THENCE NORTH 01°09'43" WEST A DISTANCE OF 93.49 FEET: THENCE ALONG A NON TANGENT CURVE TURNING TO THE RIGHT WITH AN ARC LENGTH OF 106.65 FEET, WITH A RADIUS OF 155.90 FEET, WITH A CHORD BEARING OF NORTH 43°46'53" EAST , WITH A CHORD LENGTH OF 104.58 FEET; THENCE NORTH 88°43'14" EAST A DISTANCE OF 175.91 FEET; THENCE SOUTH 01°17'06" EAST PARALLEL TO THE EAST LINE OF LOT 7 A DISTANCE OF 122.72 FEET; THENCE NORTH 88°21 '14" EAST A DISTANCE OF 39.89 FEET TO THE POINT BEGINNING;; City of Tulsa, Tulsa County, State of Oklahoma**

**23183—Wallace Design Company - Mark Capron**

**Action Requested:**

Variance to allow parking inside the City of Tulsa planned Right-of-Way (Section 90.090-A). **LOCATION:** 4008 West Charles Page Boulevard (**CD 1**)

**Presentation:**

The applicant has requested a continuance to September 28, 2021.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **RADNEY**, the Board voted 5-0-0 (Barrientos, Bond, Brown, Radney, Wallace "aye"; no "nays"; no "abstentions"; none absent) to **CONTINUE** the request for a Variance to allow parking inside the City of Tulsa planned Right-of-Way (Section 90.090-A) to the September 28, 2021 Board of Adjustment meeting; for the following property:

**A TRACT OF LAND THAT IS PART OF LOT NINE (9) AND ALL OF LOTS TEN (10) AND ELEVEN (11), BLOCK ONE (1), HOME GARDENS SECOND ADDITION, AN ADDITION TO THE CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE RECORDED PLAT THEREOF, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF LOT 1, BLOCK 1, HOME GARDENS SECOND ADDITION;  
THENCE SOUTH 89°00'53" WEST ALONG THE NORTH LINE OF BLOCK 1 A DISTANCE OF 404.00 FEET TO THE POINT OF BEGINNING;  
THENCE SOUTH 01 °03'36" EAST 140.00 FEET TO A POINT ON THE SOUTH LINE OF LOT 9, BLOCK 1;  
THENCE SOUTH 89°00'53" WEST ALONG THE SOUTH LINE OF LOTS 9, 10 AND 11 A DISTANCE OF 146.00 FEET TO THE SOUTHWEST CORNER OF LOT 11, BLOCK 1;  
THENCE NORTH 01°03'36" WEST 140.00 FEET TO THE NORTHWEST CORNER OF LOT 11, BLOCK 1;  
THENCE NORTH 89°00'53" EAST ALONG THE NORTH LINE OF LOTS 9, 10 AND 11 A DISTANCE OF 146.00 FEET TO THE POINT OF BEGINNING.  
SAID TRACT OF LAND CONTAINS 20,440.0 SQ. FEET OR 0.47 ACRES  
BEARINGS ARE BASED UPON THE OKLAHOMA STATE PLANE COORDINATE SYSTEM, (3501OK N),NORTH AMERICAN DATUM 1983 (NAD83) USING THE NORTH LINE OF BLOCK 1,HOME GARDENS SECOND ADDITION AS N 89°00'53" E., City of Tulsa, Tulsa County, State of Oklahoma**

## **23171—Jim Stephens**

### **Action Requested:**

Special Exception to permit Commercial Vehicle Sales & Rentals in the CS District (Section 15.020, Table 15-2); Variance to permit outdoor storage within 300 feet of an abutting R District (Section 15.040-A). **LOCATION:** 6622 South Peoria Avenue East **(CD 2)**

### **Presentation:**

**Jim Stephens**, P. O. Box 580785, Tulsa, OK; stated he represents South Peoria, LLC and presented exhibits to the Board. Mr. Stephens stated that what is proposed is new buildings with new fences for a new business and he thinks it will not be injurious to the neighborhood. The area is a mixed-use corridor and an area of growth. The major goal for this project is to increase activity in the area that will benefit the residents and existing businesses. The property is zoned CS and that requires a Special Exception request. The business is primarily a rental business with a few sales.

Mr. Bond asked Mr. Stephens to state the hardship for the Variance request. Mr. Stephens stated the hardship is that the existing lot is 235 x 261 so the 300-foot separation from a residential area cannot be met thus the lot itself is the hardship.

Mr. Bond asked Mr. Stephens about the fencing. Mr. Stephens stated there is existing iron fencing on 15th Street, and 6-foot iron fencing is prevalent in the area.

Mr. Brown asked Mr. Stephens where the primary entry to the site will be located. Mr. Stephens stated that it will be Peoria because it is the entry with the most width.

Mr. Brown asked Mr. Stephens about the hours of operation. Mr. Stephens stated they will be 7:30 A.M. to 5:30 P.M., Monday through Friday and 8:00 A.M. to 5:00 P.M. on Saturday and closed on Sunday.

### **Interested Parties:**

**Charles Hewitt**, 2910 East 15th Street, Tulsa, OK; stated that in regard to the business hours, occasionally a delivery truck may come in a little late to bring back a piece of equipment, but the business would not be open to the public.

Mr. Brown asked Mr. Hewitt about lighting for the lot. Mr. Hewitt stated there are plans to light the lot.

Mr. Brown asked Mr. Hewitt about the fence around the property. Mr. Hewitt stated there are trees and bushes around the perimeter but there will be either a fence with slats or iron fencing.

Jim Stephens came forward and stated there is an existing 6-foot chain link fence in the rear separating the business from the residential area.

Ms. Radney asked Mr. Stephens about the signatures on the petition that had been presented to the Board today. Mr. Stephens stated that one of the petitions is from the condominiums directly south of the subject property, and the other petition is primarily commercial signatures.

**Mr. Chapman stated that the audience online is having difficulty hearing the proceedings and he asked that everyone speak clearly into the microphones.**

Mr. Bond asked Mr. Hewitt if he has had any issues with the neighbors. Mr. Hewitt answered no. Mr. Bond asked Mr. Hewitt which neighborhood his business abutted. Mr. Hewitt stated that it is Florence Park which has an active neighborhood association and if they are not happy, they will let you know.

Ms. Radney stated she has concerns about the lighting, because there are multi-story buildings to the south. Mr. Hewitt stated that the light reflection would depend on where the light is pointing so it would be necessary to point the lights so there is no reflection toward the residential area. Currently there is lighting on the building, and it is directed toward the parking lot and toward 15th Street. Ms. Radney asked if there would be any pole mounted lighting. Mr. Hewitt stated the lighting would be primarily on the building with a few pole mounted lights on the east. Mr. Hewitt stated that he wants to have enough lighting for the security cameras at nighttime.

Mr. Wilkerson stated the Zoning Code has specific standards for lighting and fencing to protect abutting property owners and that will be handled through the permit process.

**Suzanne Willis**, 3531 South Yorktown Avenue, Tulsa, OK; typed a message about a 6-foot fence around the property and she is favor of more lighting on the subject site.

**Comments and Questions:**

Mr. Bond stated that in full disclosure he has rented items from ABC Rentals in the past.

Ms. Radney stated that in full disclosure she has rented items from ABC Rentals in the past also, and the business does have a good reputation for being a good commercial neighbor in a residential neighborhood.

**Board Action:**

On **MOTION** of **RADNEY**, the Board voted 5-0-0 (Barrientos, Bond, Brown, Radney, Wallace "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Special Exception to permit Commercial Vehicle Sales & Rentals in the CS District (Section 15.020, Table 15-2); Variance to permit outdoor storage within 300 feet of an abutting R District (Section 15.040-A), subject to conceptual plans 3.10, 3.11 and 3.12 of the agenda packet. The Board finds the hardship to be the unusual size of the lot and the nature of the intended business not comporting with the intent of the City Code. 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. 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 2 BLK 1, COMPTON ADDN RESUB PRT L1B1 CLINE ADD, City of Tulsa, Tulsa County, State of Oklahoma**

## **23177—Jessica Reitz**

### **Action Requested:**

**Special Exception** to permit low-impact medical marijuana processing (Low-impact Manufacturing & Industry Use) in the CBD District (Section 15.020, Table 15-2).

**LOCATION:** 314 East 3rd Street South (CD 4)

### **Presentation:**

**Jessica Reitz**, 5440 South Boston Avenue, Tulsa, OK; stated this process is taking apart the medical marijuana and rolling it into paper; that is the extent of the processing. There is no extraction, no combustion and there will be no full-grown plants.

Mr. Brown asked Ms. Reitz about the air filtering system. Ms. Reitz stated the building is unoccupied at the moment and it does not touch other properties. There are no special filtering systems currently. The only portion of the permitting process that she has not been through is the zoning, everything else has been approved. Ms. Reitz stated that she expects that to be taken care of when there is an inspection.

Mr. Brown asked Ms. Reitz if there were other occupants in the building. Ms. Reitz stated there is a salon that is open part time. The salon has one person that works there, and Ms. Reitz stated she has only one employee.

Mr. Barrientos asked Ms. Reitz if she had spoken to any of the neighbors. Ms. Reitz stated the neighbors include Fassler Hall, Juniper, a bookstore and outside of the notices sent for this request she has not spoken to the neighbors.

Ms. Radney asked Ms. Reitz if this was a suite in an office building. Ms. Reitz answered affirmatively.

Mr. Bond asked staff if there would any additional requirements for ventilation. Mr. Chapman stated there is absolutely a need for ventilation because an odor is not to be detected outside the tenant space.

Ms. Radney asked Ms. Reitz if there was a common ventilation system in place currently that is shared by all of the suites in the building. Ms. Reitz stated she would have to verify that, but she would assume that the ventilation system is whatever is standard.

### **Interested Parties:**

**James Starks**, 2186 South 76th East Place, Broken Arrow, OK; stated he is the owner of the facility, and everything is low impact. Mr. Starks stated he has been in the oil industry for 13 years and he knows how dangerous extraction equipment is, and he does not want to place a danger element to his employees or himself or the community so he chose the low impact medical marijuana processing with the pre-rolls; everything else will be outsourced. Mr. Starks stated that he has spent \$2,500 on a ventilation

system to keep everything inside the facility. He is moving and has been down for three months, and he has done a lot of research to find the proper equipment.

Ms. Radney asked Mr. Starks if he was saying that he owns an existing dispensary or is he saying he owns an existing manufacturing. Mr. Starks stated that he owns an existing processing business. Ms. Radney asked if his established business is in a stand-alone building or is it in a suite of offices like his proposed site? Mr. Starks stated that in Broken Arrow it was in an industrial area which was not a problem because the ventilation system was separated, but in the subject building he has a stand-alone, plug-in the wall system to keep everything ventilated similar to a cigar bar. Ms. Radney asked Mr. Starks if that system vented to the outside. Mr. Starks stated that it does not, it captures everything on the inside similar to an o-zone system, but it is not as dangerous as an o-zone system. Ms. Radney asked Mr. Starks if he had information on that system that could be shared with the Board today. Mr. Starks stated that he does not have any information on it, but he could get it. Ms. Radney asked Mr. Starks if the proposed system has been approved for a marijuana operation. Mr. Starks stated that it similar to a home filtration system for allergies. Ms. Reitz stepped forward and stated that she is not aware if the system has been approved for any other facilities in Tulsa.

**Jessica Reitz** came forward and stated that she thinks the City would let them know if the system was sufficient during the inspection process.

Mr. Brown stated this is a tight urban site and asked where the employees would park. Ms. Reitz stated there is “pay for” parking and that is where she and Mr. Starks currently parks.

Ms. Radney asked where the other tenant is located in the building, using the plan on page 4.9 of the agenda packet. Ms. Reitz stated the other tenant is also on the first floor located forward of the subject space, east of the lobby.

Mr. Chapman stated that the Code stipulates that a ventilation filtration system that prevents odor from being detectable at the boundaries of the lot, which is housing the use, or in such cases, a multiple tenant building, the ventilation air system must prevent odor from being detected outside the tenant space housing the use. Mr. Chapman stated that it is clear what it is supposed to do, as a matter of the Board’s condition they could make it clear to the applicant because he does not have the technical specifications to really condition what type of system to use but the intent is in the Code.

Ms. Radney asked Mr. Starks if he has a lease for the subject space. Ms. Reitz came forward stated that Mr. Starks has been in the space for three months already and plans to continue being in the space if allowed.

**Comments and Questions:**

Ms. Radney stated that she is loath to approve something that she does not think is going to be denied, because she does not understand how the ventilation system is going to be isolated in an office setting. She is sympathetic but she is not convinced that

it is even actually possible to do what the applicant wants to do in this space. She likes the concept and understands what the applicant is attempting to do but she is concerned that it is not feasible to do what they are asking to do.

Ms. Radney asked if there were any examples of any kind of manufacturing in an office building with shared ventilation. Mr. Chapman stated the Board has approved one near the Federal Court House located at 3rd and Boulder in a building above a sushi restaurant. The applicant should be aware that as he goes through the building permit process, rightly or wrongly, he thinks the applicant will be treated as a manufacturing use in terms of the Building Code which will probably trigger other items, i.e., like a sprinkler system. The Zoning Code is what triggered this request, and if the applicant leaves today with an approval, it does not mean that per Building Code and per Fire Code it will be a clear road. Everything will have to be marked as "up to Code" and there will be a lot more reviewed than he thinks the applicant is anticipating.

Mr. Wallace agreed, and stated also, the occupancy of low impact, he is not sure what that is classified under. There is a lot of shared space with this office setup.

**Board Action:**

On **MOTION** of **RADNEY**, the Board voted 5-0-0 (Barrientos, Bond, Brown, Radney, Wallace "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a **Special Exception** to permit low-impact medical marijuana processing (Low-impact Manufacturing & Industry Use) in the CBD District (Section 15.020, Table 15-2), subject to conceptual plans 4.8 and 4.9 of the agenda packet. The use is to comply with medical marijuana zoning regulations. 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:

**E25 W70 LT 1 BLK 116, TULSA-ORIGINAL TOWN, City of Tulsa, Tulsa County, State of Oklahoma**

**23178—Julie Nickel**

**Action Requested:**

Special Exception to allow a fence to exceed 4 feet in height inside the street setback (Section 45.080-A). **LOCATION:** 2525 East 30th Street South (CD 4)

**Presentation:**

**John Nickel**, 2216 East 30th Street, Tulsa, OK; stated he purchased the subject property and would like to build a house on it. In order to have the privacy he wants he would like to have a wall on the west side and on the east side. The lot has existing walls on the north side and on the south side.

Mr. Bond asked if the front of the lot was on the south side of the property. Mr. Nickel answered affirmatively. Mr. Bond asked where the proposed walls would stop for the east and west sides of the property. Mr. Nickel stated that one wall would stop at 29 feet and the other would stop at 15'-6".

Mr. Bond asked Mr. Nickel what the setback is for the property. Mr. Nickel answered no. Mr. Chapman stated the setback is 35 feet, and to confirm what Mr. Nickel is saying there is an existing wall that is above four feet, and it is non-conforming.

Mr. Bond asked how tall the existing wall is. Mr. Nickel stated that it is in excess of five feet. Mr. Bond asked how old the non-conforming wall is. Mr. Nickel stated that he is not sure, but he thinks it is over 20 years old.

Mr. Brown asked Mr. Nickel if the fence would be pre-cast concrete slabs. Mr. Nickel answered affirmatively.

Mr. Bond asked Mr. Nickel if the fence would be eight feet tall and go out about 15 feet into the setback. Mr. Nickel answered affirmatively stating that it would match the existing walls.

Mr. Brown asked Mr. Nickel if he had contacted the neighbors. Mr. Nickel answered affirmatively stating that no one has had any negative comments.

Mr. Bond asked Mr. Nickel if he had considered matching the height of the existing wall on the south side. Mr. Nickel answered no, he can if it is necessary, but he would like to have the 8-foot wall.

Mr. Brown asked Mr. Nickel if this was his solution to privacy instead of landscaping. Mr. Nickel stated that he plans to landscape the wall but in order to have the environment he wants for the house he will build the wall and then landscape because landscape takes a long time to grow.

Mr. Barrientos asked Mr. Nickel if he had considered water drainage when designing the wall. Mr. Nickel answered affirmatively, stating the landscape architect is working on that.

Mr. Bond asked staff if there is a Letter of Deficiency for the south facing non-conforming wall, or is it not being dealt with. Mr. Chapman stated his interpretation is that the Board's vote would make it a conforming wall by granting a Special Exception which include the new wall and the existing wall in the street setback that is above four feet.

Mr. Bond asked Mr. Nickel if the new house would be built behind the 35-foot setback. Mr. Nickel stated that his plans show the house to be at 31 feet.

**Julie Nickel**, 2216 East 30th Street, Tulsa, OK; stated there is a large tree in the yard and the house will be behind that tree placing well behind the 35 feet. The wall being requested will tie into the existing wall which was built many years ago. The wall being proposed will be ten feet on center and the slab will be slid in between two posts. The slabs will not affect runoff or established tree roots.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **RADNEY**, the Board voted 5-0-0 (Barrientos, Bond, Brown, Radney, Wallace "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a **Special Exception** to allow a fence to exceed 4 feet in height inside the street setback (Section 45.080-A), subject to conceptual plans 5.8, 5.9, 5.10, 5.11 and 5.12 of the agenda packet. On the east and west boundaries of the subject property the new installed fence is not to exceed the height of the existing stone wall as has been presented to the Board today. The existing non-conforming wall is not to exceed its current height within the same street setback. 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 LTS 4 & 5 BEG 25NW NEC LT 5 TH SW249.18 CRV RT 155.30 NE251.43 SE115.15 POB & PRT LT 2 BLK 3 WOODY-CREST SUB & PRT LT 5 BEG NEC LT 5 TH E76.60 SE52.04 SW188.89 CRV RT 106.22 CRV RT 22.38 NE249.18 SE25 POB BLK 2, WOODY-CREST SUB, SOUTH LEWIS PARK, City of Tulsa, Tulsa County, State of Oklahoma**

DRAFT

**23179—Rachel Mondt**

**Action Requested:**

Special Exception to permit an accessory dwelling unit in an RE District (Section 45.031). **LOCATION:** 1327 East 27th Place South **(CD 4)**

**Mr. Bond left the meeting at 2:27 P.M.**

**Presentation:**

**Robert McQuary**, 1327 East 27th Place, Tulsa, OK; stated he would like to have an ADU on the subject property.

Mr. Bond asked Mr. McQuary if there was an existing accessory dwelling unit on the property. Mr. McQuary answered no.

Mr. Chapman stated the applicant is doing a garage addition on the front of the house and the ADU is the detached building in the rear.

Mr. McQuary agreed with Mr. Chapman stating that he would like to have a pool house in the back.

Mr. Brown asked Mr. McQuary if the ADU was the pool house. Mr. McQuary answered affirmatively.

Mr. McQuary stated that future plans are to renovate the existing house and they will move into the pool house during the house renovation. From the new circular drive there is a drive that continues to the pool house which will have a two-car garage, and the addition will be a four-car garage on the front.

Mr. Barrientos asked Mr. McQuary if he had spoken to the neighbors on the north side, west and east. Mr. McQuary stated he has spoken to the neighbor on the west side, has not spoken to the neighbors to the east.

Mr. Brown asked Mr. McQuary if there were plans to rent the ADU in the future. Mr. McQuary answered no.

Mr. Wilkerson stated typically as a building is constructed as an accessory dwelling unit it has a kitchen, bathroom, bedrooms and is truly a dwelling unit. These plans clearly show that it is in that basic definition, and it would be an accessory dwelling unit because of the kitchen and bathroom.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **WALLACE**, the Board voted 4-0-1 (Barrientos, Brown, Radney, Wallace "aye"; no "nays"; Bond "abstaining"; none absent) to **APPROVE** the request for a **Special Exception** to permit an accessory dwelling unit in an RE District (Section 45.031), subject to conceptual plans 6.13, 6.14, 6.15, 6.16, 6.17, 6.18, 6.19, 6.20, 6.21, 6.22 and 6.23 of the agenda packet. There is no relief given for setback or other dimensions and must comply with the Zoning Code. 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:

**W7 LT 2 & E99 LT 3 & E2.5 W33 N305 LT 3, SUNNYCREST ACREAGE, City of Tulsa, Tulsa County, State of Oklahoma**

**Mr. Bond re-entered the meeting at 2:35 P.M.**

DRAFT

## **23180—Tony Jordan**

### **Action Requested:**

Special Exception to allow a fence to exceed 4 feet in height in a front street setback (Section 45.080-A). **LOCATION:** 2407 & 2405 East 26th Place South (CD 4)

### **Presentation:**

**Tony Jordan**, 10139 Bonney Bridge Road, Owasso, OK; stated he would like to raise the existing fence to over four feet in height on 26th Place.

**Mr. Chapman stated he has received a message stating an interested party cannot hear.**

Mr. Brown asked Mr. Jordan to explain the project to the Board. Mr. Jordan stated that he would like to put footings in with a low 2'-0" stone wall with 6'-0" columns and wrought iron fencing about every 26'-0" in between the columns.

Mr. Brown asked Mr. Jordan why there are two addresses for one house. Mr. Jordan stated the owner owns both properties.

Mr. Wilkerson stated that on page 7.8 the drawings illustrate a fair amount of fencing that is in the street right-of-way, so the Board cannot take action in the right-of-way. It needs to be very clear that the fence is all on the applicant's property and not in the street right-of-way.

Mr. Jordan stated that it is on the owner's property. Everything has been approved by the City except for the height requirement along 26th Place. The fence will be an open fence for the entire 6'-0" so it will not be a total enclosure. The fence will preserve the beauty of the lot for the neighborhood.

Ms. Radney asked Mr. Jordan if the new fence would be following the footprint of the existing fence. Mr. Jordan stated the new fence will follow real closely to the existing fence. The existing fence could be over or under the existing property line in some locations, but it will follow within the applicant's property.

Ms. Radney stated she has concerns about the ingress and egress points on 26th Street and 26th Place, because if the fence is moved out it will potentially obstruct the view. Mr. Jordan stated the fence is along the property line and the fence is not moving out.

Mr. Jordan stated the City has an existing plastic-coated chain-link fence, and he thinks that was done on purpose so when the traffic leaves 26th Street and 26th Place they can still see, and he plans to join the applicant's fencing to that.

Mr. Jordan stated the fence is to secure the property because there have been people that thought the property was a park before the chain link fence was erected and they are trespassing. The fence is for security not just for the beauty of it.

Mr. Barrientos stated that a neighbor, Mara Rabinowitz, sent an e-mail with concerns about the water runoff. Mr. Jordan stated the plan has passed through the City; it went through watershed review, but he is willing to install scuppers at the bottom of the stonewall periodically to make the neighbors happy if need be.

Mr. Bond asked staff what the setback is for the property. Mr. Chapman stated the normal setback is 35 feet.

Mr. Chapman stated there are still audio issues, so he asks that everyone clearly speak into the microphone because he thinks there are interested parties that want to speak on this item.

**Interested Parties:**

**Robert Blankenship**, 2447 East 26th Place, Tulsa, OK; stated he owns the property located at 2456 East 26th Street also. The fence is going to surround his main residence on the north and south and it will separate the 2456 property in a south fashion also. His concern is the water runoff. When there is a heavy rain, he has a river in his back yard and with the proposed base of the fence he does not know how the water will be able to enter into Crow Creek. When looking to the east the land runs all up hill to South Columbia, and from Birmingham down to his property he thinks it drops off about 50 feet. The water runoff is a serious concern for him, and he thinks without scuppers in the wall water will accumulate against the fence making the property a marshy area and a potential mosquito breeding ground. Water currently runs out onto 26th Place where the Crow Creek runs under the bridge and it puddles there, and in the wintertime, it will freeze making it hazardous to drive through the area. Mr. Blankenship stated that he has lived in the neighborhood for more than 30 years, and there is a lot of landscaping and trees that are over 30 years old on the north south property line, and he thinks the fence will cause some of those older trees to die; he knows his neighbor does not hesitate to cut down trees. On the northwest property line on the satellite map, the dotted line that runs north south appears to be against the wall of his house, and he does have a water faucet on that side of the house, and he is not sure there would be enough room for him to access that faucet. Mr. Blankenship stated he does not have a problem with the east west proposed fencing and the north south fence along Lewis, but he does have serious concerns about the fencing along the east fence line, he believes this would decrease the values of both his properties and he would be surrounded by a jail house fence. Mr. Blankenship stated there is also an old retaining wall that has existed more than 30 years and it appears the proposed fence would be to the east of that.

**Mara Rabinowitz**, 2412 East 26th Place, Tulsa, OK; stated her house faces the subject property, and currently there is a 4-foot-tall chain link fence along 26th Place. She has a few concerns. The whole neighborhood slopes downward toward the creek and that fence base being solid raises concerns about the water runoff. She has concerns about the fence base, which faces four houses, and it cuts off the front of those four houses from the larger neighborhood. She believes that causes a decrease in her property value as well. She does not understand why the height needs to be above four feet; she has never seen anyone climb over the 4-foot fence. Ms. Rabinowitz believes the fence detracts from the character of the neighborhood and there is no unique need for the subject property to have a higher fence in the front.

**Rebuttal:**

**Tony Jordan** came forward and stated there are existing drains to handle the water runoff and he has never had any complaints from the neighbor that has that water runoff flow onto his property. Mr. Jordan stated the driveway is in the process of being redone in the front and there will be additional drains added to take care of the water. There is an existing retaining wall on the property on the east side from the north to the south and there will be another survey done to make sure where the property boundaries are located. Mr. Jordan stated that when he installs a fence, he never places the fence on the property line, he always brings the fence in two to six inches to make sure the fence is clear of the property line. Mr. Jordan stated he knows that Ms. Rabinowitz has drainage issues, and it has been

addressed by the City and he does not think there will be an issue. Mr. Jordan stated the proposed fence height is for security because everyone knows that a 4-foot fence is not hard to get over. As for distracting from the neighborhood character he does not know what to say; the fence is a beautiful fence.

Ms. Radney asked Mr. Jordan which boundary is considered to be the front of the property. Mr. Jordan stated it is 26th Place and that is all today's request covers.

Mr. Wilkerson stated that at the southeast corner of the property where there is a proposed fence going into the right-of-way over the Crow Creek Channel, that is definitely in the right-of-way and he does not what type of fencing is being proposed over the existing retaining wall, but there is fencing in the right-of-way over Crow Creek. Mr. Jordan stated that is an existing stone wall. Mr. Wilkerson stated the plan shows a proposed new fence. Mr. Jordan agreed but the fence will go over the creek and not down into the creek and will not go over the existing wall. Mr. Wilkerson stated the plan does not make that clear and it appears that there is new construction there. Mr. Jordan stated the proposed fence will adjoin the City fencing and will stop the proposed fence where the City fence stops. Mr. Wilkerson stated there are routine issues with City Engineering when the Board grants a fence height in the right-of-way because the Board does not have jurisdiction there. Mr. Jordan stated that he has been working with the City for over a year and there has been a plan submitted that the City finally accepted except for the Variance on 26th Place.

Mr. Brown asked Mr. Jordan where the utilities are on the property. Mr. Jordan stated the sewer is in the center of the street, 26th Place, the electrical easement is on the north, south and east sides of the property and the water comes from 26th Street.

Ms. Radney asked if the existing chain link fence was inside the street setback. Mr. Jordan stated that it is on the property line. Mr. Chapman stated it is all in the street setback, so the existing fence which he thinks was erected without a permit is inside the street setback; the entire fence is on the property line. The first 35 feet from East 26th Place going north, that is where the fence is limited to four feet, so what the Board would be approving is a 6-foot fence around the perimeter 35 feet in. Mr. Chapman stated that he does not think it is clear on the plans but in terms of what the Board is being asked to approve it is clear that from the street the public will see a 6-foot fence around the perimeter the building along East 26th Place.

Mr. Jordan stated that when the fence is constructed it will be resurveyed and the fence will be within the property line by 2 to 6 inches, and a survey will set the pins.

Mr. Bond asked Mr. Jordan if the fence will be six feet tall on South Lewis. Mr. Jordan answered affirmatively, stating that it will be six feet tall up to the City fence. There will be stone columns with wrought iron in between the columns. Mr. Jordan stated there are several examples throughout the whole neighborhood where walls have been built much higher than what the City allows; these fences are all over mid-town.

Ms. Radney thinks that what makes this request more complicated is the 26th Place and 26th Street are major arteries for the neighborhood, so building the compound style wall around this much of an area does change the feeling of the neighborhood. She would be more inclined to support the style of fence that has been proposed if it actually followed the existing chain link fence boundary. She is not at all inclined to support it at the property line. Mr. Jordan stated that is where the chain link fence is now. Ms. Radney stated that on page 7.2 the fence is deviating from that and that is why she is confused, and page 7.11 the

proposed fence is at the property line but on page 7.12 the fence is set back considerably farther into the property. Mr. Jordan stated the fence will not go out all the way to the property line on the two corners, Lewis and 26th; the fence will cut back and join the City's fence. Ms. Radney stated that she reads page 7.11 as the proposed fence having a 90-degree angle at Lewis Avenue and 26th Street. Mr. Jordan stated he does not have a dimension from the center of the street or the curbs so he cannot honestly answer that question but is the property line and it is the rear and side lot, so he does not understand the question. Ms. Radney stated the 26th Street side is less in question; it is as the fences potentially obscure the view as people are leaving the neighborhood on 26th Street and leaving the neighborhood on 26th Place. She is extremely familiar with the neighborhood, and this is an area where there is a lot of speeding as people are approaching the intersection of 21st Street. Even though there are going to be brick columns and wrought iron fencing that will obscure the view out to 11th Street whether it is something within the property boundary or not. She is looking at this fence of its impact in the terms of harmony and spirit and that it would not be injurious to the neighborhood, she is looking at it more to the injury to the neighborhood. She understands what the homeowner is requesting but it cannot be injurious to the neighborhood. Mr. Jordan stated the fence could probably be adjusted if needed in that area.

Mr. Bond stated a 6-foot at the property line is problematic for him. Mr. Bond stated that he would be happy to look at another proposal of fencing at the property line.

Mr. Brown stated he does not have a problem with a 6-foot-tall fence because the applicant has gone to quite an effort to make a porous fence. Yes, it will be awkward at the corner of 26th Street and 26th Place because of the speeding. He would feel better if the fence along Lewis had a different route to make viewing going into traffic less hazardous.

Ms. Radney stated she does still have questions about a solid impermeable barrier along nearly the entirety of 26th Place and 26th Street; the existing fence line is set back from the property line on 26th Place. She would like to see something that honors the existing context of the neighborhood.

Ms. Radney asked Mr. Jordan to explain specifically how the water concerns would be alleviated since he has spoken about the City addressing them. Mr. Jordan stated there is an inlet along the street on 26th Street where most of the water flows currently. There are curbs on 26th Street but there are no curbs on 26th Place and the water flows from both directions toward the bridge.

Ms. Radney asked Mr. Jordan to explain what a scupper is. Mr. Jordan stated that it is an opening, similar to a weep hole in a hatch.

Mr. Wallace asked Mr. Jordan what exists on the property on the east side now. Mr. Jordan stated there are a few pine trees, azalea bushes, boulders. Mr. Wallace asked if there was fencing there now. Mr. Jordan answered no.

Mr. Wilkerson stated the Board is to consider only what is being proposed along 26th Place and make the statement of the entire perimeter is concerning. Ms. Radney stated she would be a no vote unless the entire perimeter is being discussed, whether it is before the Board or not because there will be a contiguous fence built that will be harmonious around the entire perimeter. To the extent the Board approves something for 26th Place that is going to be extending, although it is not in the Board's jurisdiction, around the entire perimeter if it is not harmonious with the entire neighborhood's concerns, she is a hard no. Ms. Radney

asked Mr. Jordan if he would have a problem with something that is less rigid along 26th Street because it does taper back toward 26th Street. Mr. Jordan asked if 26th Street was in question today. Ms. Radney stated that Mr. Wilkerson has stated that it is not, but she is saying for her approval on 26th Place she cares about 26th Street because people have spoke about the impact on 26th Street as well.

Mr. Jordan asked Ms. Radney what area of 26th Street is she concerned about. Ms. Radney stated that on the northern boundary, the existing fence follows a gentler path than being right at the property line. Ms. Radney asked Mr. Jordan if he was opposed to following that path with the existing chain link fence as is demonstrated on page 7.12. Mr. Jordan stated that currently there is an existing split rail fence with wire and vines on it, he thinks that could be pulled back. Mr. Jordan stated there is a gate and a stone wall in that area and he cannot visualize going out perpendicular from that wall, if that does happen, he could change that because the fence would still be within the property line. So, yes, he could change that.

Mr. Brown asked If the Board should continue this request until they can see a revised plan. Ms. Radney stated that would be better and cleaner.

**Christopher Cadieux**, 2407 East 26th Place, Tulsa, OK; stated he does not think there can another plan redrawn quickly. What is being asked for is an artistic interpretation without giving any specifications and it would be very hard to comply with something the Board is imagining. He does not want to go to the expense of having the fence drawn by another landscape architect not knowing specifically what the Board objects to. If the Board could give specifications, he would be glad to meet them.

Mr. Bond stated his objection is the 6-foot-tall fence which is not by right allowed. If the fence were not 6-foot tall and set back to achieve less of a compound look he would be an affirmative vote. If the existing plans were just marked up with a sharpie would alright with him and showing how far back from the property line the fence would be is something the Board is wanting to know. Mr. Cadieux stated he is willing to place the fence wherever the Board thinks it needs to go but he needs the Board to be more explicit.

Mr. Bond asked Mr. Jordan if he would like a continuance for this request. Mr. Jordan asked if it could not be done now. Mr. Bond offered to move this case to the end of the agenda so the plans could be discussed. Mr. Jordan and Mr. Cadieux moved to a table at the rear of the room to review the plans.

**Comments and Questions:**

None.

**Board Action:**

No Board action required at this time.

**23181—Brad Davis**

**Action Requested:**

Special Exception to increase the permitted driveway width in a Residential District (Section 55.090-F.3). **LOCATION:** 5834 East 98th Street South (**CD 8**)

**Presentation:**

**Brad Davis**, 5834 East 98th Street, Tulsa, OK; stated he would like to increase the driveway leading to the garage to 22 feet and to increase the driveway the leads to the rear by 10 feet. He understands there is 30 feet allowed behind the right-of-way and 27 feet in the right-of-way to the street. Both driveways have a combined total of 32 feet. Mr. Davis stated that he had spoken with the neighbor and the neighbor's concern was the 5-foot radius, so he moved the driveway over a foot. Mr. Davis stated the neighbor across the street submitted a letter of no objection, and the neighbor on the other side has already done to his driveway what he is requesting to do today, and he has no objections.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **RADNEY**, the Board voted 5-0-0 (Barrientos, Bond, Brown, Radney, Wallace "aye"; no "nays"; "abstaining"; 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 the conceptual plan on page 8.8 of the agenda packet as amended survey data and photo that was submitted today. The applicant is to obtain a permit from the City for construction in the right-of-way. 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 7 BLK 1, SUN MEADOW II, City of Tulsa, Tulsa County, State of Oklahoma**

**23180—Tony Jordan**

**Action Requested:**

Special Exception to allow a fence to exceed 4 feet in height in a front street setback (Section 45.080-A). **LOCATION:** 2407 & 2405 East 26th Place South (CD 4)

**This case is being continued from previously in the agenda line up.**

**Presentation:**

**Tony Jordan**, 10139 Bonney Bridge Road, Owasso, OK; stated he and his client have reviewed the plans and have marked the plans with the changes. Mr. Jordan gave the marked-up blueprint plans to the Board and the Board huddled together in discussion while reviewing the plans at the bench.

Mr. Bond asked Mr. Jordan where the fence will be placed in the revised plans. Mr. Jordan stated the fence will follow the property line and be pulled back in. Mr. Wilkerson stated he does not see any proposed changes.

Mr. Bond stated the issue is that the Board had asked that on 26th Place the fence be pulled back to where the current chain link fence is located. Mr. Jordan stated that Mr. Cadieux is not willing to do that because he wants to take the fence to the property line; he has already given up property.

Mr. Bond stated the Board can vote now or this case can be continued. Mr. Jordan informed the Board to vote.

Ms. Radney stated that from her perspective she understands the applicant's desire to place the fence all the way to the property line on 26th Place but she thinks there are implications for the neighborhood that suggests that it is actually detrimental to the neighborhood. If it is not going to follow the existing fence line, she is inclined to say no. She appreciates the adjustments on 26th Street and she definitely appreciates improving the site line for people who are entering and exiting the neighborhood, she thinks that is a necessary adjustment but she is not in support of pulling the fence all the way out to the street on 26th Place.

**Interested Parties:**

The interested parties were still present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **RADNEY**, the Board voted 4-1-0 (Barrientos, Bond, Radney, Wallace "aye"; Brown "nay"; no "abstentions"; none absent) to **DENY** the request for a Special Exception to allow a fence to exceed 4 feet in height in a front street setback (Section 45.080-A); for the following property:

**PRT LTS 7 & 8 BEG 54.66W & 5S NWC LT 7 TH E280.72 S126.81 SW78.21 W78.21 S200 TO PT ON SL LT 7 CRVLF 26.65 SW125 TO SWC LT 7 CRVRT 41.15 NLY367.75 POB BLK 1 and PRT LT 8 54.66W 5S NEC LT 8 TH S367.75 CRV RT110.88 NW218.60 CRV RT32.84 N277.91 E333.33 TO POB BLK 1 , WOODY-CREST SUB, City of Tulsa, Tulsa County, State of Oklahoma**

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### **OTHER BUSINESS**

Consider motion and vote to enter Executive Session pursuant to Title 25 O.S. Section 307(B)(4) for the purpose of allowing confidential communications between the Commission and its legal counsel regarding the Tulsa County District Court Case No. CV-2019-1345, Diana W. Capehart, as Trustee of the Robert J. and Diana W. Capehart Family Trust dated July 28, 2009 v. Tulsa City Board of Adjustment, including discussion of plaintiff's settlement proposal, such action to include, but not be limited to, rejection, approval, or offering a counter-offer of settlement.

Exit the Executive Session to discuss and possibly take action on plaintiff's settlement proposal in Tulsa County District Court Case No. CV-2019-1345, Diana W. Capehart, as Trustee of the Robert J. and Diana W. Capehart Family Trust dated July 28, 2009 v. Tulsa City Board of Adjustment, such action to include but not be limited to rejection, approval or offering a counteroffer of settlement.

**Mr. Bond informed the Board that the City Attorney who was to brief the Board on this matter is not available.**

Mr. Bond asked City Legal for clarification, he requested for the Board to be convened in Executive Session to discuss appellant matters such as this and it was denied and was told that it was not a lawful request. There is now an Executive Session placed on the agenda from City Legal so he would like clarification, is the Board allowed to have an Executive Session or not.

Ms. Audrey Blank stated the Board is allowed to have Executive Sessions with the requirements to follow the Open Meetings Act. The exact legal matter, the exact case number, and give an indication of what is to be discussed. The agenda item says it is a confidential communication between the Commission and its legal counsel regarding the court case Diana Capehart vs. the Board of Adjustment including discussion of the plaintiff's settlement proposal.

Ms. Blank stated the public has to be given notice of what specific item is being discussed and without having a specific legal action and specific indication of what is to be discussed then that does not fit into the requirements of the Open Meetings Act.

Mr. Bond stated that he will provide a written list of cases currently being appealed, the Board just wants an update from City Legal so Legal can review the list.

Mr. Bond stated these items will be back on the agenda depending on the availability of City Legal.

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**NEW BUSINESS**

None.

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**BOARD MEMBER COMMENTS**

Mr. Brown asked staff about the status of the parking permits for the Board members. Ms. Sparger stated that she will ask for an update.

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There being no further business, the meeting adjourned at 3:58 p.m.

Date approved: \_\_\_\_\_

\_\_\_\_\_  
Chair

DRAFT