

# WHITING & BRUNER, PLLC.

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July 10, 2020

Tulsa Board of Adjustments  
Attn: Austin Chapman, Planner, City of Tulsa Board of Adjustment  
esubmit@incog.org

<b>RE:</b>	<b>BOA-22960, Variance</b>
<b>Hearing Date:</b>	<b>07/14/2020 @ 1:00</b>
<b>Property:</b>	<b>6030 S. Peoria, Tulsa, OK 74105</b>
<b>Applicant:</b>	<b>Elton Fernandes</b>

Dear Sir or Madam:

I represent Mr. Elton Fernandes regarding the property located at *6030 S. Peoria, Tulsa, OK 74105*. Mr. Fernandes has requested a variance of the 1,000-foot spacing requirement for a medical marijuana dispensary from another medical marijuana dispensary, which although approved has not yet opened. If the variance is not granted Mr. Fernandes would suffer undue hardship.

On 3/31/2020, Mr. Fernandes bought the subject property to be used as a dispensary, as the property has been used for that purpose for quite some time. The subject property has been designed to function as a dispensary and is well suited to be used for that purpose. When Mr. Fernandes purchased the subject property, eviction proceedings had already been initiated by the previous landlord against the tenant, Jennifer Fralick d/b/a Top Shelf Dispensary ("Top Shelf"), due to failure to pay rent. However, due to the Covid-19 pandemic, the courts were closed for several months. Once the courts finally re-opened, proceedings have been subject to extensive delays. As a result, Top Shelf has been in wrongful possession of the premises for over six (6) months, failing to pay any rent whatsoever to Mr. Fernandes. The matter is set for trial on September 3, 2020. Although Mr. Fernandes has taken all appropriate steps, he must obtain this variance in order to operate a dispensary at the subject property.

On 6/09/2020, Top Shelf's verification of spacing to permit a medical marijuana dispensary was granted to allow Top Shelf to operate a dispensary at 1135 E 61 St. S., Tulsa, OK 74136. As a result of Top Shelf refusing to vacate the premises, Mr. Fernandes has been unjustly prevented from establishing a dispensary at his property. The sole reason Mr. Fernandes purchased the property was to operate a dispensary at the subject location as there no other dispensaries within the 1,000-foot vicinity at the time of purchase. At this very moment, Top Shelf continues to operate a dispensary at Mr. Fernandes's property without paying any rent whatsoever. Because of Top Shelf's wrongful possession of the premises, Mr. Fernandes's rights have been unduly interfered with and he has been wrongfully prevented from obtaining his licensure. A combination of the wrongful possession by Top Shelf, as well as the unprecedented pandemic has contributed to this hardship.

Again, the building has been and is currently operating as a dispensary. Granting the variance would allow the premises to continue to be used in a manner that is economically viable for the city as well as in line with the current and continued use of the property with no noticeable differences to the neighborhood. Further, the building is located in an "Area of Growth," in which general agreement exists that development or redevelopment is beneficial. This variance would increase economic activity and investment in the area to benefit existing residents and businesses. Failure to grant the variance would deny Mr. Fernandes the ability to enjoy the fruits of his property due to no fault of his own.

Sincerely,



**D. AARON BRUNER, ESQ**