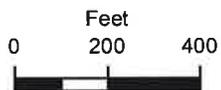


SUBJECT TRACT

BOA-23023

5.1



BOARD OF ADJUSTMENT CASE REPORT

STR: 9330

Case Number: **BOA-23023**

CZM: 47

CD: 9

HEARING DATE: 11/10/2020 1:00 PM

APPLICANT: Katy Anderson

ACTION REQUESTED: Special Exception to add a Commercial/Assembly & Entertainment/Outdoor Use in a CS zoning district (Sec.15.020 Table 15-2)

LOCATION: 1711 E SKELLY DR S

ZONED: CS

PRESENT USE: Medical Mairjauna Dispensary

TRACT SIZE: 23091.25 SQ FT

LEGAL DESCRIPTION: N230 LT 10 LESS BEG NL HWY 44 & WL LT 10 TH E110 N25.10 SW110.46 S15 POB FOR RD, PERRY'S 27207 SUB

RELEVANT PREVIOUS ACTIONS:

Subject Property:

BOA-22934; On 07.17.20 the Board approved a **Variance** to increase the permitted 240 square foot display area for a wall sign in a CS District.

Surrounding Property:

BOA-23005; On 09.22.2020 the approved a **Special Exception** to permit a self-storage facility in the OL district. (Section 15.020, Table 15-2) **Variance** of Sec. 40.360-B.3 of the code to permit up to two (2) garage-style access doors to be visible at ground level from abutting O/R lots and street rights-of-way. Property located 5012 S. Victor Ave, immediately North of the subject property.

RELATIONSHIP TO THE COMPREHENSIVE PLAN: The Tulsa Comprehensive Plan identifies the subject property as part of a "Mixed-Use-Corridor" and an "Area of Growth".

The purpose of **Areas of Growth** is to direct the allocation of resources and channel growth to where it will be beneficial and can best improve access to jobs, housing, and services with fewer and shorter auto trips. Areas of Growth are parts of the city where general agreement exists that development or redevelopment is beneficial. As steps are taken to plan for, and, in some cases, develop or redevelop these areas, ensuring that existing residents will not be displaced is a high priority. A major goal is to increase economic activity in the area to benefit existing residents and businesses, and where necessary, provide the stimulus to redevelop.

Mixed-Use Corridors are Tulsa's modern thoroughfares that pair high capacity transportation facilities with housing, commercial, and employment uses. Off the main travel route, land uses include multifamily housing, small lot, and townhouse developments, which step down intensities to integrate with single family neighborhoods. Mixed-Use Corridors usually have four or more travel lanes, and sometimes additional lanes dedicated for transit and bicycle use. The pedestrian realm includes

sidewalks separated from traffic by street trees, medians, and parallel parking strips. Pedestrian crossings are designed so they are highly visible and make use of the shortest path across a street. Buildings along Mixed-Use Corridors include windows and storefronts along the sidewalk, with automobile parking generally located on the side or behind.

ANALYSIS OF SURROUNDING AREA: The subject tract is located Along Skelly Drive between Utica and Victor Avenues. The proposed Use is within 150' of a Nursing Home in an RM-2 Zoning District to the East and within 150' of an RS-3 Subdivision to the West.

STAFF COMMENTS: The applicant is requesting a **Special Exception** to add a Commercial/Assembly & Entertainment/Outdoor Use in a CS zoning district (Sec.15.020 Table 15-2)

An Assembly and Entertainment Use is described in Sec. 35.050-B as follows:

35.050-B Assembly and Entertainment

Uses that provide gathering places for participant or spectator recreation, entertainment or other assembly activities. Assembly and entertainment uses may provide incidental food or beverage service. Typical uses include gun clubs, shooting ranges, health clubs, gymnasiums, riding stables and academies, banquet halls, entertainment centers, event centers, billiard centers, bowling centers, cinemas, go-cart tracks, laser tag, paintball, miniature golf courses, stadiums, arenas, video arcades, race tracks, fairgrounds, rodeo grounds, water parks, amusement parks, food truck courts, and live theaters. Outdoor seating and dining areas that exceed 50% of the indoor floor area of the subject principal use (e.g., bar, restaurant or indoor assembly and entertainment use) are regulated as an outdoor assembly and entertainment use.

Assembly and Entertainment Uses are subject to the supplemental regulations of Sec. 40.040:

Section 40.040 Assembly and Entertainment

Whenever an assembly and entertainment use is located on a lot abutting an R or AG-R-zoned lot, a screening wall or fence must be provided along the common lot line in accordance with the F1 screening fence or wall standards of §65.070-C.

The applicant is requesting to use the outdoor space in the rear of the current medical marijuana dispensary for a for an Outdoor Assembly and Entertainment Use to be used in conjunction with the dispensary. The Board may consider the compatibility of the Office zoning that borders the property on three sides that would not permit an Assembly and Entertainment Use. Additionally, the Board may ask the applicant if Medical Marijuana will be consumed on site. Other medical marijuana uses including the existing dispensary must provide protection to neighbors against odors. The proposed Outdoor Assembly and Entertainment Use would not be able to provide the same filtration systems required inside the building.

Currently the RS-3 subdivision to the West of the subject property has masonry wall installed between I-44 and the development to help screen them from the Interstate and dampen the noise. There would not be any screening required for this property since the surrounding zoning has all been changed to Office. If the Board is inclined to approve the request requiring screening between the proposed use and the Office zoning surrounding them should be considered.

SAMPLE MOTION:

Move to _____ (approve/deny) a **Special Exception** to add a Commercial/Assembly & Entertainment/Outdoor Use in a CS zoning district (Sec.15.020 Table 15-2)

- Per the Conceptual Plan(s) shown on page(s) _____ of the agenda packet.
- Subject to the following conditions (including time limitation, if any):

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.

- 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 13 BLK 19, CHEROKEE HGTS ADDN, City of Tulsa, Tulsa County, State of Oklahoma

22934—Katy Anderson

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Action Requested:

Variance to increase the permitted 240 square foot display area for a wall sign in a CS District (Section 60.080-B). **LOCATION:** 1711 East Skelly Drive (CD 9)

Mr. Van De Wiele stated that what the Board has seen is that the City, via the Permit Office, has taken the position that the left half of the subject site is the sign and the right half is not a sign. Mr. Chapman stated that is correct. Mr. Van De Wiele stated the Board is tasked to give a Variance from the square footage.

Presentation:

Katy Anderson, 1711 East Skelly Drive, Tulsa, OK; stated the last time she was before the Board it was discussed that the City originally designated the whole mural as a sign, and she needs a Variance for the sign requirements. After that meeting it was decided that if she would go back to the City of Tulsa and ask if they would agree that from the peace signs to the right is all mural and the purple background with the dispensary logo on the left half is signage the Board would approve the Variance because of the placement of the property and because the sign is not easily seen because of the topography. Ms. Anderson stated she went to the City of Tulsa and has submitted that to the Board, and now she is back before the Board for another review of her case.

Mr. Van De Wiele stated that after the last meeting Mr. Sage did reach out to him and he told Mr. Sage that he needed to direct his comments to Mr. Austin Chapman at INCOG.

Interested Parties:

Ron Sage, 1703 East Skelly Drive, Tulsa, OK; stated he is in the building directly west of the subject dispensary. That wall is clearly there to attract attention to the dispensary

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and part of it reads Tulsa high country. The Kush logo in the front matches the same color scheme as the surfboard and peace signs. It was mentioned at the last meeting that he was offended by the sign and he was never offended by the sign, it would take a lot more than her sign to offend him. In continuing on, the sheer size of the sign is the issue. In section 60.080, sub paragraph F, it clearly reads 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 the adjacent property, which it has. Mr. Sage stated that his tenants have already informed him that they may not be renewing their lease. He has received comments from other neighbors in the Brookside area; he has many properties in the Brookside area. This has definitely been a point of contention as far as the overall grandness and the look of the building. In the previous case, the Board said because of the way it looks it doesn't match the neighborhood and it intrudes over into the building line, and the Board made Variance to the building to take it back. The was based on a judgment call and he thinks this is the same thing. Mr. Sage thinks the Board has to look at this and ask does it need to be this large? Is it necessary to be this large to be seen from the freeway? The laws that are in place were put there for a reason by the City Planners, and he asks that the Board look at that and look at the laws that were put in place for this reason. It directly affects and alters the essential character of the neighborhood and impairs the use of the development of the neighborhood businesses. Mr. Sage believes it is injurious to the values of the neighborhood and the businesses as well. Mr. Sage stated he is opposed to this request.

John Huffines, 256 East 46th Street, Tulsa, OK; stated he is before the Board on behalf of the Brookside Neighborhood Association. He appreciates the applicant's entrepreneurial spirit, however in this particular case, the association sees it important to impose the law. The association is fine with the advertising of the sign by standards previously set. This business is situated close to I-44, between Lewis and Peoria Avenues, is located in area where there is much lane changing occurs and exiting from I-44. It is helpful to keep motorists focused on driving. The sign size limits were determined for a reason and he would like the Board to honor the impact of the City Planners. Much thought and deliberation go into the setting of these standards. Mr. Huffines stated the applicant does have other options, such as a billboard. Mr. Huffines asks the Board to deny this request and maintain the standards. The neighborhood would appreciate the smaller sign, 240 square feet, in that it will be more harmonious in the neighborhood setting.

Rebuttal:

Katy Anderson came forward and stated she has nothing more to add.

Comments and Questions:

Ms. Ross stated she would vote to keep the left half, although she does think the right half is really cool and a great design. This does not bother her at all, but she does think that artwork and murals look really cool in certain districts in Tulsa and in other places they can stick out. In this case she does think this sticks out so she would probably vote to deny the relief for the right half.

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Mr. Van De Wiele stated that the way the City Permit Office has now looked at this is that there is no request for a Variance in connection to the right half of wall. Mr. Chapman stated that is correct. It is the Kush Dispensary which is 340 square feet on the left portion. Mr. Van De Wiele stated by right the applicant has 240 square feet for a sign and the applicant is requesting 100 square feet additional to allow the size of the left half of this.

Mr. Van De Wiele stated he has not seen a basis for a hardship for an additional 100 square feet; that basically means that entire side of the building is going to be painted whether it be by a mural or a sign. If the point of the hardship is that this is right next to a highway, and he is not entirely certain that a motorist could exit the highway by the time the sign was seen, he thinks the applicant has done enough work there to catch the attention of the public. He does not see a hardship for another 100 square feet of signage on the building.

Ms. Radney stated that if the artist came back and finished the mural going southward reducing the amount of wall art that actually is the business, the Board would not have any purview over that either. Ms. Radney believes the applicant has made her case to be approved for the additional signage.

Board Action:

On **MOTION** of **ROSS**, the Board voted 3-1-0 (Radney, Ross, Shelton "aye"; Van De Wiele "nay"; no "abstentions"; Bond absent) to **APPROVE** the request for a Variance to increase the permitted 240 square foot display area for a wall sign in a CS District (Section 60.080-B), subject to page 4.5 as shown in the agenda packet. The Board has found the hardship to be the location of the subject property being on a one-way street, and only allowing for signage that can be visible from only one side of the building. 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

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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:

N230 LT 10 LESS BEG NL HWY 44 & WL LT 10 TH E110 N25.10 SW110.46 S15 POB FOR RD, PERRY'S 27207 SUB, City of Tulsa, Tulsa County, State of Oklahoma

NEW APPLICATIONS

22947—Jermaine Miller

Action Requested:

Variance to allow a detached accessory structure to exceed 40% of the floor area of the principal residential structure (Section 45.030-A); Variance to allow an accessory structure to exceed one story, 18 feet in height and more than 10 feet in height to the top of the top plate (Section 90.090.C); Variance to allow more than 30% coverage in the rear setback (Section 90.090-C.2). **LOCATION:** 1232 South Braden Avenue East (CD 5)

Presentation:

Jermaine Miller, 1232 South Braden Avenue, Tulsa, OK; stated he did not know anything about permits or the Board of Adjustment, so he started to build an extra house in the back yard to be close to his Grandmother. He went the first contractor he could find, and that contractor started construction. The City of Tulsa Inspector came out and informed him that there was no permit to build, warned him of all the violations, and shut the job down. Afterward he went to INCOG and now he is before the Board. Just recently he received e-mails from the neighbors about the proposed apartment complex, an increase in noise, an increase in trash, and an increase of traffic but that is not the case. Mr. Miller stated that it will be the same as before. Mr. Miller stated that there was an e-mail regarding the window in the rear and he does not have a problem with removing that window if needed.

Mr. Van De Wiele asked Mr. Miller how many bedrooms will be in the proposed house. Mr. Miller stated that it will be two bedrooms.

Ms. Ross asked Mr. Miller if he wrote the statement of hardship that is shown in page 6.4 in the agenda packet. Mr. Miller answered affirmatively. Ms. Ross stated that statement says the house is to be a rental and generate income. Mr. Miller stated that he would be the one renting the house. Ms. Ross asked if the owners of the front house are a relation. Mr. Miller stated he is related by marriage; the owner is his grandmother-in-law.

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22943—Robert Jackson

Action Requested:

Verification of the 1,000-foot spacing requirement for a medical marijuana dispensary from another medical marijuana dispensary (Section 40.225-D).
LOCATION: 4328 South Mingo Road East (CD 7)

Presentation:

Robert Jackson, 4328 South Mingo Road, Tulsa, OK; no formal presentation was made but the applicant was available for any questions from the Board.

Ms. Ross stated the Board has a map exhibit on page 14.9 there is 2,990 feet from the nearest dispensary. Mr. Jackson confirmed the statement.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 5-0-0 (Bond, Radney, Ross, Shelton, Van De Wiele "aye"; no "nays"; no "abstentions"; none absent) I move that based upon the facts in this matter as they presently exist, we **ACCEPT** the applicant's verification of spacing to permit a medical marijuana dispensary subject to the action of the Board being void should another medical marijuana dispensary be established prior to the establishment of this medical marijuana dispensary; for the following property:

PRT SE NE BEG 1281.50N & 108.73NW SECR NE TH S270.71 W229.96 N368.79 SE249.95 POB SEC 25 19 13 1.69ACS, City of Tulsa, Tulsa County, State of Oklahoma

22934—Katy Anderson

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Action Requested:

Variance to increase the permitted 240 square foot display area for a wall sign in a CS District (Section 60.080-B). **LOCATION:** 1711 East Skelly Drive South (CD 9)

Presentation:

Katy Anderson, 1711 East Skelly Drive, Tulsa, OK; stated she has a mural on the side of her wall that was painted for her business. As soon as the mural went up there was a complaint placed with the City, so the City Inspector contacted her and asked her to permit the mural. Ms. Anderson stated that she did obtain a permit and was told that the sizing of the mural is too large because of the logo and it is considered signage instead of a mural. Ms. Anderson stated that the neighbors to the west have expressed

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that they are not happy with the mural. There was a meeting yesterday in hopes of reaching a resolution about the mural but there was no compromise because they did not like the peace signs and the flowers; the artwork.

Ms. Ross asked Ms. Anderson if the neighbors said they did not like the artwork. Ms. Anderson stated the neighbors told her that it evokes a party vibe that is unprofessional.

Mr. Van De Wiele asked Mr. Chapman if 240 feet was allowable for the sign. Mr. Chapman answered affirmatively. Mr. Van De Wiele asked if the entire wall was counted as a sign? Ms. Anderson stated when the City did the measurements, they counted the entire drawing as signage. Mr. Chapman stated the dimensions on that are 740 square feet. Ms. Anderson stated that her argument is that the back half of the building is not signage because it does not have her logo on it, it doesn't have the same context as her building or business, it is just artwork.

Ms. Radney asked Ms. Anderson if she had a copy of what she uses as a logo, like a business card or letterhead? Ms. Ross stated that Ms. Anderson is wearing a shirt that has her logo on it and it is the same font and everything as the Kush. Ms. Radney asked Ms. Anderson if she was using the artwork in other part of her business as advertisement. Ms. Anderson stated that she does not use the mural; it is posted places by other people, but she does not use it for advertisement.

Ms. Anderson stated that she has a seven-page petition that neighbors and customers have signed showing support for the mural. Ms. Anderson stated she has people coming into her business everyday telling her that they never noticed the building until the mural was painted; those people live in the neighborhood and have been in the neighborhood for years. People tell her that they drive down the highway and see it, and that the mural is what brought them into her business. The mural is her best advertising.

Mr. Van De Wiele asked Ms. Anderson if she owned the vacant lot next to her. Ms. Anderson stated the lot is owned by the state, it was purchased when the highway was widened and is held up in a lawsuit currently.

Ms. Shelton asked Ms. Anderson if she had any plans to erect signage by the road. Ms. Anderson stated if she keeps the mural as is, she will not add any additional signage because she is at the maximum. If she has to remove the logo from the mural to keep the mural, then she would want to add additional signage.

Ms. Radney asked staff if the dispensary flag that is at Skelly considered part of the applicant's signage or is that temporary. Mr. Chapman stated that he cannot speak to whether it was permitted but typically it would be considered a promotional signage, depending on how close it is to the road it possibly could be in the right-of-way which is not allowed. Ms. Anderson stated that when the City Inspector called her the flag was discussed and he told her to keep the flag out of the right-of-way and she brings the flag in every night.

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Ms. Ross asked Ms. Anderson to state her hardship for her request. Ms. Anderson stated that if the mural is the best way, she has to advertise her business because of the topography and the turn in the highway.

Mr. Bond asked Ms. Anderson if the artist that painted the mural would be free to paint another similar mural somewhere else. Ms. Anderson stated that she believes they would be able to do so, because there are murals all down Brookside. Ms. Anderson stated that artist is with Clean Hands and he has painted murals all over Tulsa. Mr. Bond asked Ms. Anderson if the murals would look similar to this and have nothing related to her product. Ms. Anderson answered affirmatively. Mr. Bond asked Ms. Anderson if there was no secondary meaning. Ms. Anderson answered no. Ms. Anderson stated that she wanted a very comfortable and welcoming vibe and she thinks the mural does that. Other than that, there is no ulterior motive with the design.

Mr. Bond stated the test here is whether this is part of the applicant's trade for advertising versus whether it is decoration, which in this case he thinks is protesting the decoration. Mr. Bond thinks there is a line in the middle, one which is distinctive advertising and one which is not. If the applicant is over budget on the first half, based on her location off the exit of the highway he would be inclined to see that as a hardship. The second half of the sign, he believes, is a mural to make the City great; they are all over and he would hate to start a habit of policing murals on the sides of buildings.

Ms. Shelton stated she does not think the applicant can physically have a traditional sign. There is overhead that is really burdensome across the front of her property, there is a freestanding sign to the west that is minimal and hard to see. Ms. Shelton agrees with the argument that this is the best and maybe the only way to advertise the applicant's business.

Interested Parties:

Ron Sage, 1703 East Skelly Drive, Tulsa, OK; stated he has the building next door to the subject property. Mr. Sage stated that he has been in the building for four years and the complaint that he has had from his tenants is that the sign doesn't invoke professionalism and the tone that is required to continue business. His tenants have expressed a desire to end their leases or not to renew their lease because of the tone and overall size of the sign. Mr. Sage stated that he has tenants that are health insurance companies, payment processing company, commercial appraiser, architectural firm, a vast array of businesses. Mr. Sage stated that he is also concerned that the sign will negatively impact the building to attract tenants in the future. What the sign evokes is a party vibe and this is an office corridor. This sounds like the applicant is asking for forgiveness rather than permission. Mr. Sage stated that he had a sign placed out front, We Buy Houses, and he went to Claude Neon Federal Sign, went through all the permits and the Code requirements. Mr. Sage stated that his overall concern is being able to attract tenants and keep his building occupied.

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Ms. Ross asked Mr. Sage if the complaints he was receiving were against the mural itself or is it that there is a dispensary next door. Mr. Sage stated that it is the mural itself, the dispensary is not an issue.

Mr. Van De Wiele asked Mr. Sage if when the tenants are discussing the mural with him, is it the entirety of it or is it the right half or the left half or is it all of it? Mr. Sage stated that it is more the right half of it. Mr. Van De Wiele asked Mr. Sage if his tenants would still be of the same opinion if the Kush Dispensary were painted over? Mr. Sage stated that he does not want to speak for the tenants because he thinks there are tenants waiting to speak.

Candice Bradshaw, 1547 East 50th Place, Tulsa, OK; stated she has to drive by the sign every day because she lives in the area. The sign is so large and so loud. The sign looks like graffiti rather than an advertising for a medical facility and that is what a dispensary is supposed to be. It does not blend with the surrounding office buildings. It does not blend with the residential area that she lives in. She does not have an issue with a sign like this if it is in the right area, like downtown in an art district.

Mr. Van De Wiele asked Ms. Bradshaw if it is the entirety of the sign, is it parts of the sign? Ms. Bradshaw stated that it is the size and the loudness, taken as a whole. The sign is a lot to take in. Ms. Bradshaw stated that she has no issue with the dispensary because they are all over Tulsa. She has seen other dispensaries that look very professional and fit in with other businesses and other offices. She has an issue with the size and the loudness of the sign.

Craig Trevithick, 1703 East Skelly Drive, Tulsa, OK; stated he is a tenant and for him personally it is the size of the sign. He has clients from internationals, non-profit, child organizations, etc. One of the things he likes about the building he is in is the professional feel, the professional vibe, although it is one of the only office buildings in the area. These are office buildings mixed with residential and it is a pleasure bringing people to the office. The sign is an eyesore, his clients ask him about it. He would prefer the applicant stick to the Code. His issue is the overall size, and he cannot tell where the sign ends and where the artwork begins.

Terry Tidwell, 1414 East 39th Street, Suite 115, Tulsa, OK; stated he is a tenant. The sign is well done but it looks like graffiti. Mr. Tidwell thinks the sign was intentionally designed to look like graffiti. To him it gives a Gonzo party atmosphere vibe, especially the cabana, the beach, and the peace signs. The sign takes away the professional atmosphere of the office building. Mr. Tidwell stated that a lot of the clients that come to the building are very conservative, with conservative views. He would ask the Board if they were an accountant or a lawyer would they want this sign on your building? He thinks this will help his customer base and would be happy if the applicant painted over the party part of the sign.

Terry Banes, 1439 South Gary Place, Tulsa, OK; stated he is the artist and has been painting murals in Tulsa; he painted the Woody Guthrie mural in 2012. Mr. Banes

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stated that he is very aware of the signage laws and the Kush image is the only brand collateral the sign actually uses; roughly a 170 square feet and did not realize it would carry over to 240 square feet. The remainder of the mural is simply art and it is not meant to evoke a party vibe, it is meant to bring brightness to a rather beige wall where there would be darkness. Murals are meant to increase the arts and bring the community together and bring unity. Art is up for interpretation and if someone sees a party vibe that is their opinion. The only brand asset is the Kush logo which runs 8'-6" by 20'-0" which is 170 square feet of signage and the rest is just art to cover up a dull cinder block wall.

Ms. Radney asked Mr. Banes what he considered to be the brand collateral, looking at the diagram on page 15.4, within the allotted boundary. Mr. Banes stated that it is just the Kush logo, that is the only brand collateral that the applicant uses throughout their branding. Mr. Banes stated that everything else from the Kush to the right is just extra art that he added, and the Kush branding is what he considers signage, which is under the allotted 240 square feet. Ms. Radney asked Mr. Banes if it was his discretion to add the language within the dispensary, but it is not part of the dispensary trade artwork? Mr. Banes answered that it is not to knowledge. Ms. Radney asked Mr. Banes the name of his business. Mr. Banes stated that it is Clean Hands. Ms. Radney asked if Aaron Whisner is affiliated with the business. Mr. Banes stated that Aaron Whisner is his business partner. Ms. Radney stated that she thinks Aaron Whisner is a wonderful person but with that she will need to recuse herself as he is a former client.

Ms. Radney recused and left the meeting at 4:44 P.M.

Rebuttal:

Katy Anderson came forward and stated that the reason a resolution could not be had yesterday is because she thought the trouble would be with the front half of the mural not the back half, and she had trouble with what peace signs, a sun, a bus and some flowers evoked a party unprofessional vibe. This is art and it is meant to be bring the neighborhood joy and it is not meant to bring controversial issues. Ms. Anderson stated that she has not received any negative comments on her sign until yesterday.

Comments and Questions:

Mr. Van De Wiele stated that he has been reviewing the Zoning Code and he asked staff about Section 60.130, how to measure signs. There is a provision that says if it is a sign that is enclosed in a frame or a cabinet, which this is not, then the whole frame or cabinet is measured. What he is looking at is Subsection 2 and it states the area of a sign comprised of individual letters or elements attached to a building wall, is this the section the Board should be in? If this is where the Board should be then it is the smallest geometric figure, i.e. a square, rectangle, circle, that can be drawn around the letters. Is that what is being done? Clearly, it seems like the permitting department stipulated that the whole wall is the sign but that is not how he reads the Zoning Code. Mr. Chapman believes that permitting was given an exhibit and that is what the

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applicant said was her sign. If the Board is inclined not to consider the ... Mr. Van De Wiele asked how this got to this stage if this was done first, was there a notice of violation? Mr. Chapman stated the applicant has mentioned that there was an Inspector that visited her business. Mr. Van De Wiele asked if there was any correspondence from the Inspector. Mr. Chapman stated that he does not have any, and the only comments he has are from the Permit Center; a Letter of Deficiency.

Ms. Anderson came forward and stated that after the City received a telephone call, they called her, there was not a violation issued, the Inspector just told to her to permit the whole mural. The Inspector directed her to permit the entire thing as a sign so that is what she did. She was then rejected and at that point she was asked to scale the sign down or come before the Board of Adjustment for a Variance.

Mr. Van De Wiele asked staff what section in the Zoning Code tells him how to measure this sign. What he thinks he knows is if he painted the entire wall hot pink and then painted a 10 x 10 area that just said dispensary he does not think the Permit Center would call the pink portion a sign, he thinks they would draw a box around the letters and say that is the sign. Is this in that category? Mr. Wilkerson stated that when signage is looked at on any other permit application that comes through INCOG that is typically discretionary, staff would look at the signage chapter just like the Board has. There has been quite a bit of discussion about where the line would be drawn between artwork and the sign itself. In this particular instance it appears the Permit Office may have blurred that line, the easy thing to do from their perspective was to consider the entire wall a sign and ask for a Variance. That is what is in front of the Board, is there a Variance to allow that much square footage. Mr. Van De Wiele asked who initially decided the size of the sign, did the applicant say she has a sign a certain size or did the Permit Center say she has this large of a sign? Mr. Chapman stated that he believes it was the applicant because there was an application for a sign plan that showed a 9 x 80 sign and that is what was reviewed, issued a Letter of Deficiency and at this point the Board is deciding a Variance.

Ms. Blank stated that the definition of sign in the Code is on page 95-17 and it is very broad. A sign is not just words but also symbols, letters, figures, design symbols, fixtures and colors designed to attract attention. Ms. Blank stated that a sign can be more than just words, and the reference about measuring individual letters or drawing boxes around the letter, she knows it applies to individual letters affixed to a wall but she is not sure how that plays in measuring a painting. Mr. Van De Wiele stated that he understands that and forget how we got here, but is this whole thing a sign or not? Ms. Blank stated that it fits within the general definition of a sign.

Mr. Bond stated the only question for him is if the applicant is entitled to a Variance based on the fact that she is over by 100 square feet. The only germane question is whether there is a hardship. Mr. Bond thinks the right side of the wall is a mural, it is art. Whether anybody likes it or not he thinks it is protected.

Ms. Shelton agrees with Mr. Bond, she is in favor of the request.

BOA - 22934

FILE COPY

Mr. Van De Wiele stated he has the same type of thoughts, but the fact that the Zoning Code definition talks about things that are done to attract attention is giving a little bit of a pause. Has the advertising been blended into art such that all of it is a sign? He does not know and that is what he is concerned about.

Ms. Blank stated she is concerned that the Board is now venturing into deciding what part is the determination of the plan review that all was a sign. The Board is not really being asked to do that, the Board is being asked to determine what size it should be. Mr. Van De Wiele agreed with that statement and stated that he wishes this had come before the Board as an appeal, but if that is the case this is effectively an application for 9 x 80 or 720 square feet and that makes it a 480 foot Variance request. He cannot get there from a hardship standpoint.

Ms. Ross stated that she does not have a problem with the Variance going from 240 square feet to 340 square feet for the left side. She does not have a problem with the artwork, other than the issues that have been brought up today. She does agree, per the definition of a sign, this is there to attract attention to the business.

Ms. Blank asked if the applicant would consider going back to the permit department for a revised Letter of Deficiency given the discussion of the Board today. Ms. Blank thinks the Board deciding that only part of this is a sign is not before them today. This is just an option; the applicant can elect to move forward today.

Ms. Ross asked Ms. Anderson if she would consider taking Ms. Blank's suggestion by going back to the permit office to get a clarification on how of this wall is sign and how much of the wall is mural. Ms. Anderson answered affirmatively.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 4-0-1 (Bond, Ross, Shelton, Van De Wiele "aye"; no "nays"; Radney "abstaining"; none absent) to **CONTINUE** the request for a **Variance** to increase the permitted 240 square foot display area for a wall sign in a CS District (Section 60.080-B) to the July 14, 2020 Board of Adjustment meeting; for the following property:

N230 LT 10 LESS BEG NL HWY 44 & WL LT 10 TH E110 N25.10 SW110.46 S15 POB FOR RD, PERRY'S 27207 SUB, City of Tulsa, Tulsa County, State of Oklahoma

Ms. Radney re-entered the meeting at 5:15 P.M.



Subject property Facing West



Property immediately across Victor Ave. Property is used as a Nursing Home and Retirement Apartments.



East side of property from Victor.



Facing East on Skelly Dr.

CHUCK LANGE
ZONING OFFICIAL
PLANS EXAMINER

TEL (918)596-9688
clange@cityoftulsa.org



DEVELOPMENT SERVICES

175 EAST 2nd STREET, SUITE 450
TULSA, OKLAHOMA 74103

ZONING CLEARANCE PLAN REVIEW

LOD Number: 1
Katy Anderson
2712 S Gary DR
Tulsa, OK 74114

June 24, 2020

Phone: 918.381.3920

APPLICATION NO: ZCO-063117-2020

(PLEASE REFERENCE THIS NUMBER WHEN CONTACTING OUR OFFICE)

Location: 1711 E Skelly DR
Description: Outdoor Assembly & Entertainment

INFORMATION ABOUT SUBMITTING REVISIONS

OUR REVIEW HAS IDENTIFIED THE FOLLOWING CODE OMISSIONS OR DEFICIENCIES IN THE PROJECT APPLICATION FORMS, DRAWINGS, AND/OR SPECIFICATIONS. THE DOCUMENTS SHALL BE REVISED TO COMPLY WITH THE REFERENCED CODE SECTIONS.

REVISIONS NEED TO INCLUDE THE FOLLOWING:

1. A COPY OF THIS DEFICIENCY LETTER
2. A WRITTEN RESPONSE AS TO HOW EACH REVIEW COMMENT HAS BEEN RESOLVED
3. THE COMPLETED REVISED/ADDITIONAL PLANS FORM (SEE ATTACHED)
4. BOARD OF ADJUSTMENT APPROVAL DOCUMENTS, IF RELEVANT

REVISIONS SHALL BE SUBMITTED DIRECTLY TO THE CITY OF TULSA PERMIT CENTER LOCATED AT 175 EAST 2nd STREET, SUITE 450, TULSA, OKLAHOMA 74103, PHONE (918) 596-9601. THE CITY OF TULSA WILL ASSESS A RESUBMITTAL FEE. DO NOT SUBMIT REVISIONS TO THE PLANS EXAMINERS.

SUBMITTALS FAXED / EMAILED TO PLANS EXAMINERS WILL NOT BE ACCEPTED.

IMPORTANT INFORMATION

1. IF A DESIGN PROFESSIONAL IS INVOLVED, HIS/HER LETTERS, SKETCHES, DRAWINGS, ETC. SHALL BEAR HIS/HER OKLAHOMA SEAL WITH SIGNATURE AND DATE.
2. SUBMIT TWO (2) SETS OF DRAWINGS IF SUBMITTED USING PAPER, OR SUBMIT ELECTRONIC REVISIONS IN "SUPPORTING DOCUMENTS", IF ORIGINALLY SUBMITTED ON-LINE, FOR REVISED OR ADDITIONAL PLANS. REVISIONS SHALL BE IDENTIFIED WITH CLOUDS AND REVISION MARKS.
3. INFORMATION ABOUT THE ZONING CODE, BOARD OF ADJUSTMENT (BOA), PLANNING COMMISSION (TMAPC), AND THE TULSA PLANNING OFFICE AT INCOG CAN BE FOUND ONLINE AT TULSAPLANNING.ORG; IN PERSON AT 2 W. 2ND ST., 8TH FLOOR, IN TULSA; OR BY CALLING 918-584-7526 AND ASKING TO SPEAK TO SOMEONE ABOUT THIS LETTER OF DEFICIENCY.
4. A COPY OF A "RECORD SEARCH" IS IS NOT INCLUDED WITH THIS LETTER. PLEASE PRESENT THE "RECORD SEARCH" ALONG WITH THIS LETTER TO INCOG STAFF AT TIME OF APPLYING FOR BOARD OF ADJUSTMENT ACTION AT INCOG. UPON APPROVAL BY THE BOARD OF ADJUSTMENT, INCOG STAFF WILL PROVIDE THE APPROVAL DOCUMENTS TO YOU FOR IMMEDIATE SUBMITTAL TO OUR OFFICE. (See revisions submittal procedure above.).

(continued)

REVIEW COMMENTS

SECTIONS REFERENCED BELOW ARE FROM THE CITY OF TULSA ZONING CODE TITLE 42 AND CAN BE VIEWED AT
WWW.CITYOFTULSA-BOA.ORG

ZCO-063177-2020

1711 E Skelly DR

June 24, 2020

Note: As provided for in Section 70.130 you may request the Board of Adjustment (BOA) to grant a variance from the terms of the Zoning Code requirements identified in the letter of deficiency below. Please direct all questions concerning variances, special exceptions, appeals of an administrative official decision, Master Plan Developments Districts (MPD), Planned Unit Developments (PUD), Corridor (CO) zoned districts, zoning changes, platting, lot splits, lot combinations, alternative compliance landscape and screening plans and all questions regarding (BOA) or (TMAPC) application forms and fees to a representative at the Tulsa Planning Office at 918-584-7526 or esubmit@incog.org. It is your responsibility to submit to our office documentation of any appeal decisions by an authorized decision making body affecting the status of your application so we may continue to process your application. INCOG does not act as your legal or responsible agent in submitting documents to the City of Tulsa on your behalf. Staff review comments may sometimes identify compliance methods as provided in the Tulsa Zoning Code. The permit applicant is responsible for exploring all or any options available to address the noncompliance and submit the selected compliance option for review. Staff review makes neither representation nor recommendation as to any optimal method of code solution for the project.

- 1. Sec.15.020 Table 15-2:** Your proposed cannabis recreation area is designated a Commercial/Outdoor Assembly & Entertainment use and is in a CS zoning district. This use is permitted in this district by Special Exception approved by the BOA,
Review comment: Submit a copy of the BOA approved Special Exception permitting a Commercial/Outdoor Assembly & Entertainment use in a CS zoning district.
- 2. Sec.40.040:** Whenever an assembly and entertainment use is located on a lot abutting an R or AG-R-zoned lot, a screening wall or fence must be provided along the common lot line in accordance with the F1 screening fence or wall standards of *Sec.65.070-C*. Your lot abuts a residential (R) zoning district to the north. This will require screening along the lot line abutting the abutting the R district.
Review comment: Submit a site plan providing a screening wall or fence along the lot line abutting the R district to the north.
- 3. Sec.55.020 Table 55-1:** Your proposed cannabis recreation area has an area 13,200 sqft. The parking requirement is 1.10 parking spaces per 1000 sqft. This will require 15 parking spaces. An additional 6 spaces are needed for the dispensary on this lot. The total parking requirement is 21 spaces.
Review comment: Submit a site plan providing 21 parking spaces on a dust-free all-weather surface (*Sec.55.090-F2*) and in compliance with the design criteria listed in *Sec.55.090*.
- 4. Sec.70.080-B2a:** No building permit or zoning clearance permit may be issued until the subject lot or parcel for which the permit is sought has been determined to be in compliance with all applicable design and improvement requirements of the Tulsa Metropolitan Area *Subdivision and Development Regulations*, as evidenced by submittal of a recorded subdivision plat or ALTA/ACSM survey and separately recorded legal instruments. This requirement applies to any property for which a property owner-initiated zoning map amendment or development plan was approved after July 1, 1970.
Review Comment: This lot was rezoned from OL to CS on Nov. 10, 2019. This will require the submission of a Plat or approval for a Subdivision Conformance Review as a revision to this application.

Note: All references are to the City of Tulsa Zoning Code. Link to Zoning Code:
<http://tulsaplanning.org/plans/TulsaZoningCode.pdf>

Please notify the reviewer via email when your revisions have been submitted

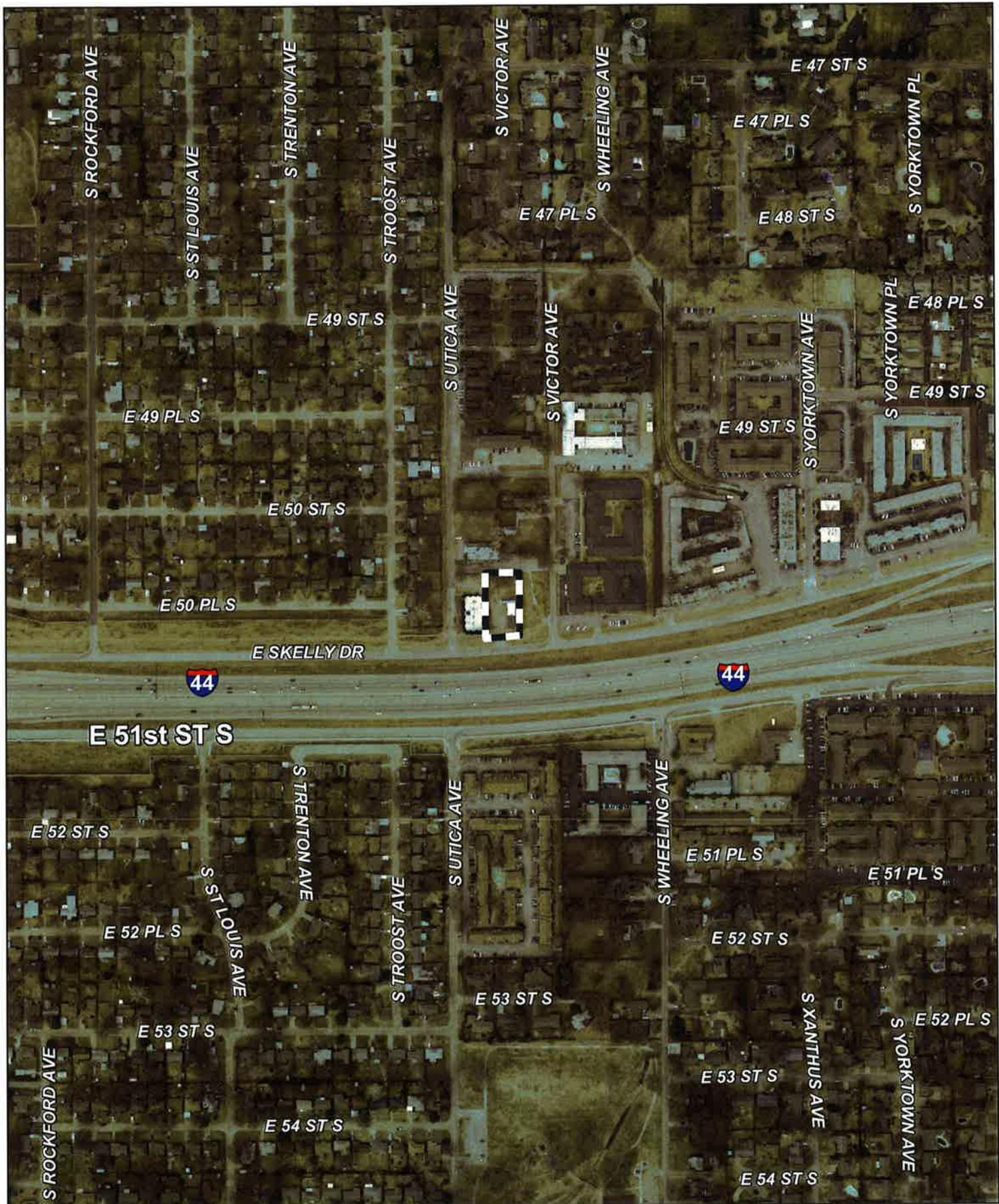
This letter of deficiencies covers Zoning plan review items only. You may receive additional letters from other disciplines such as Building or Water/Sewer/Drainage for items not addressed in this letter.

A hard copy of this letter is available upon request by the applicant.

END – ZONING CODE REVIEW

NOTE: THIS CONSTITUTES A PLAN REVIEW TO DATE IN RESPONSE TO THE SUBMITTED INFORMATION ASSOCIATED WITH THE ABOVE REFERENCED APPLICATION. ADDITIONAL ISSUES MAY DEVELOP WHEN THE REVIEW CONTINUES UPON RECEIPT OF ADDITIONAL INFORMATION REQUESTED IN THIS LETTER OR UPON ADDITIONAL SUBMITTAL FROM THE APPLICANT.

KEEP OUR OFFICE ADVISED OF ANY ACTION BY THE CITY OF TULSA BOARD OF ADJUSTMENT OR TULSA METROPOLITAN AREA PLANNING COMMISSION AFFECTING THE STATUS OF YOUR APPLICATION FOR A ZONING CLEARANCE PERMIT.



Subject Tract

BOA-23023

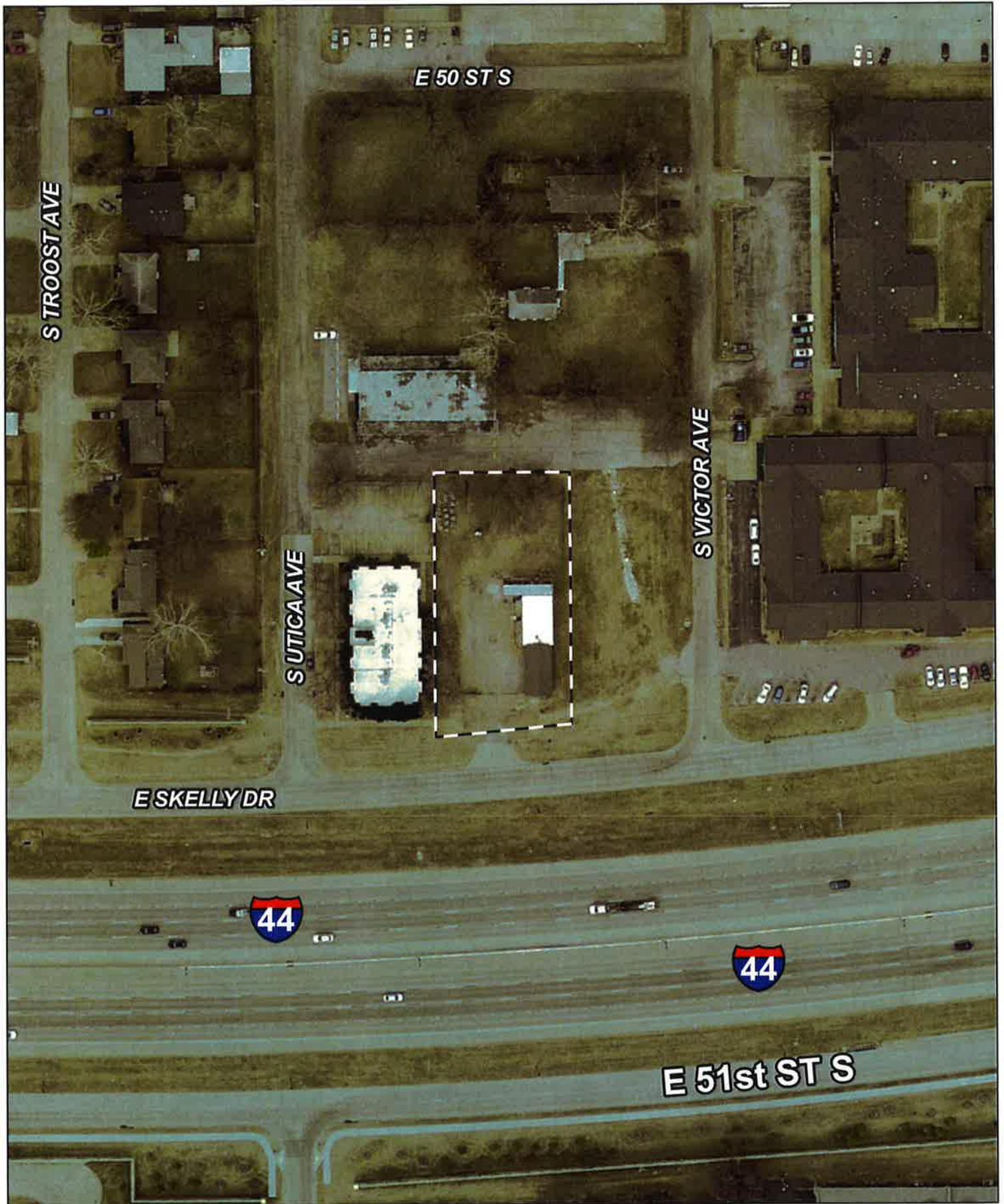
19-13 30

Note: Graphic overlays may not precisely align with physical features on the ground.

Aerial Photo Date: February 2018



5.22



S STROOST AVE

E 50 ST S

S UTICA AVE

S VICTOR AVE

E SKELLY DR

E 51st ST S



Subject Tract

BOA-23023

19-13 30

Note: Graphic overlays may not precisely align with physical features on the ground.

Aerial Photo Date: February 2018



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