

BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1224
Tuesday, March 12, 2019, 2:00 p.m.
Tulsa City Council Chambers
One Technology Center
175 East 2nd Street

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	OTHERS PRESENT
Van De Wiele, Chair Back, Vice Chair Ross, Secretary Bond Radney		Wilkerson Ulmer Sparger R. Jones	Blank, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on March 7, 2019, at 11:03 a.m., as well as at the Office of INCOG, 2 West Second Street, Suite 800.

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

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

MINUTES

On **MOTION** of **BACK**, the Board voted 5-0-0 (Back, Bond, Radney, Ross, Van De Wiele "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the **Minutes** of the February 26, 2019 Board of Adjustment Special meeting (No. 1223).

NEW APPLICATIONS

22595—Chuck Mitchell

Action Requested:

Special Exception to allow a fence to exceed 4 feet in height within the required street setback (Section 45.080); Variance of the required parking area dimensional standards (Section 55.090). **LOCATION:** 2435 North Lewis Avenue East **(CD 3)**

Presentation:

Staff requests a continuance to the March 26, 2019 Board of Adjustment meeting for additional relief needed by the applicant.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **BACK**, the Board voted 5-0-0 (Back, Bond, Radney, Ross, Van De Wiele "aye"; no "nays"; no "abstentions"; none absent) to **CONTINUE** the request for a Special Exception to allow a fence to exceed 4 feet in height within the required street setback (Section 45.080); Variance of the required parking area dimensional standards (Section 55.090) to the March 26, 2019 Board of Adjustment meeting; for the following property:

BEG 849.35S&50E NWC NW TH S50 E230.5 S420 E210.37 NE442.92 N495.76 W165.02 SW365.49 SW267.23 S149.32 POB SEC 29 20 13 9.546ACS; S420 E230.5 W280.5 NW NW SEC 29 20 13, City of Tulsa, Tulsa County, State of Oklahoma

UNFINISHED BUSINESS

22579—Vicky Ark

Action Requested:

Special Exception to allow a duplex in the RS-3 District (Table 5-2.5); Variance to reduce the required street setback (Table 5-3); Variance of the required 25-foot setback from an adjacent R District for special exception uses (Table 5-3). **LOCATION:** 1115 East 55th Street South **(CD 9)**

Presentation:

Vicky Ark, 520 South Cedar, Broken Arrow, OK; stated she would like to build a one-story duplex for her and her son.

Mr. Van De Wiele asked Ms. Ark if the street setback was from the Newport side or the 55th Street side. Ms. Ark stated that it is from the Newport side because the property is narrow and on a corner.

Mr. Van De Wiele asked Ms. Ark if one duplex would enter from Newport and the other duplex would enter from 55th Street. Ms. Ark answered affirmatively.

Mr. Van De Wiele asked Ms. Ulmer about the second Variance for the 25-foot setback from the adjacent R District. Ms. Ulmer stated it is requested because of the Special Exception use abutting the R District.

Mr. Van De Wiele asked Ms. Ark if she knew of any other duplexes in the area. Ms. Ark stated that she is not aware of any duplex, but across Newport street there is a house with two residences. Mr. Van De Wiele asked Ms. Ark if that was a duplex. Ms. Ark stated that it is not a duplex, but it seems like there is a guest house that has been converted into a residence.

Mr. Van De Wiele asked Ms. Ark why she could not have the entirety of the house set back to the 25-foot setback line. Ms. Ark stated that because of the setback in the rear and the setback on the side, she wants to make sure she has enough back yard.

Mr. Van De Wiele asked Ms. Ark to explain her hardship for the request. Ms. Ark stated if she is allowed to have the Variance, she would only need a one-story house which would be more affordable for her and her son.

Interested Parties:

There were no interested parties present.

Comments and Questions:

Ms. Back stated that she does not know why the structure cannot be moved ten feet back and still have a nice back yard. The lot is flat, and it is a corner lot, though she understands the two streets setback which is a little more impactful on a lot, but it is a nice size lot. Ms. Back stated she does not see a hardship to justify the Variance.

Mr. Van De Wiele asked Ms. Ulmer to explain the RS-3 District side, front, and rear setbacks. Ms. Ulmer stated that this is a corner lot so the front setback would be 25 feet, the side setback can be 15 feet because it is a corner lot, the interior side setback is 5 feet, and the rear setback would be 20 feet.

Mr. Van De Wiele stated he understands the desire to have as much rear yard as possible, but whatever this bump out is requiring the Variance, there is enough room to move that to functionally get the same square footage by expanding it toward the interior lot line.

Board Action:

On **MOTION** of **BACK**, the Board voted 5-0-0 (Back, Bond, Radney, Ross, Van De Wiele "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a **Special Exception** to allow a duplex in the RS-3 District (Table 5-2.5); **Variance** of the required 25-foot setback from an adjacent R District for special exception uses (Table 5-3) and **DENY** a **Variance** to reduce the required street setback from 25 feet to 15 feet (Table 5-3). The Board has found the hardship for the first Variance requested to be that the required street setback from 25 feet to 15 feet constricts the lot and the layout of the lot because this is a corner lot. The approval is per conceptual plan shown on 2.14 of the agenda packet. The Board finds that the requested Special Exception will be in harmony with the spirit and intent of the Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. The Board finds that the following facts, favorable to the property owner, have been established:

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

LTS 14 & Lt 15, BLK 2, HOUSTONIA HOME SITES ADDN, City of Tulsa, Tulsa County, State of Oklahoma

* * * * *

NEW APPLICATIONS

22590—Eric McCray

Action Requested:

Special Exception to allow a fence to exceed 4 feet in height within the required street setback (Section 45.080). **LOCATION:** 5736 South Rockford Avenue (**CD 9**)

Presentation:

Eric McCray, 5736 South Rockford Avenue, Tulsa, OK; stated he wants to utilize his own property in a reasonable manner and secure it with a fence.

Mr. Van De Wiele asked Mr. McCray if he was aware of the zoning ordinance that would allow him a six-foot fence if it were even with or behind the front façade of the house. Mr. McCray stated that he understands that there is an ordinance that states that, but if you look at the property the house sits in the middle of a double lot that has not legally been sub-divided. The ordinance, if strictly interpreted, would cut off almost a third of his property in its use.

Mr. McCray stated he has several ways he can present his case to the Board, starting with safety and security. He has filed several police reports which do not begin to reflect the amount of theft that he has experienced. He has had possessions locked and secured on the front side of the property and they have been taken. He did not erect a 20-foot, 15-foot, 12-foot, 10-foot or even an 8-foot fence to secure his property because it is not a spite fence. Six feet is the minimum action needed to secure his property from the line of sight, and from access to people who should not be there.

Mr. Van De Wiele asked Mr. McCray if the six feet went all the way around the property. Mr. McCray stated that it does not. He simply cut off the line of sight, about 15 to 20 feet on the north side where it intersects with a six-foot fence from the neighbor on the north side. There is a good amount of vegetation and growth on the west side of the property and piles of debris from the southwest neighbor that he thinks sufficiently restricts the line of sight and access from theft. Mr. McCray stated that his house on the southeast corner to the property line and running east to west on his property line has a six-foot fence that he erected, and it does not enclose the front of his property because he cut it off at the house. Mr. McCray stated that he heard the neighborhood inspector state that the very purpose of the ordinance to restrict a fence would be for fire truck access and things of that nature; that is why he did not close off the front of his house. Mr. McCray stated that if the Board would look at the property the back yard is severely limited, and the natural back yard is the north side. It would not look right to have a fence down the middle of the property. He is ready to contend that the ordinance as written is excessive, it does not have any bearing directly with how safety, morals or general welfare needs to be adhered to legally or common sense wise. Mr. McCray stated there is no one here today that would argue that the fence hinders anyone else's reasonable use of their property. The very purpose of the fence ties to the very purpose of government in itself, and that is safety and security, and this is a last resort measure after living there for ten years with thousands of dollars taken over time. Mr. McCray stated that he does not see any complaints against anyone else's reasonable use of their property or how this could be a safety issue for traffic or emergency vehicles having access to the house.

Mr. Van De Wiele asked Mr. McCray if he had erected the fence basically in the same location east to west, as the portion of the fence seen to the left or the corner of the

house, if it were moved to the west to be parallel with the fence the property could be secured and there would be no need to be here today. Mr. McCray stated that he cannot secure the front of his property; it is his property not the City's.

Mr. Van De Wiele stated there are ordinances that the Board has the jurisdiction to give some leeway to. The Board does not have the authority to change ordinances. If a person wants to change a zoning ordinance there is a City Councilor that represents their district, and that person has the ability to go talk to that man or woman about changing an ordinance. Changes happen all the time and Mr. Van De Wiele let Mr. McCray know that he would be proud for him to go do that.

Mr. Van De Wiele stated to Mr. McCray that he has the burden to prove to the Board that the Special Exception being requested is in harmony with the spirit and intent of the Zoning Code, and that it will not be injurious to the neighborhood or otherwise detrimental to the public welfare. If those topics can be addressed the Board will be happy to approve the Special Exception.

Mr. McCray stated that the legal burden of proof shifts back to the City, the presumption disappears if he can show the City acted arbitrarily, unreasonably, or abused its discretion and the ordinance is discriminatory. Mr. McCray stated he has pictures of different properties that are within 200 or 300 feet that have the precise fence at the same line. He thinks that brings the burden of proof back to the City and the burden is not his. Mr. Van De Wiele stated the arbitrary and capricious standard is the standard if a person is suing the City in the Court House, that is not the standard here. If there is evidence of other similar uses in the neighborhood, and the Board will look at them, that would go to the lack of injury to the neighborhood. Mr. Van De Wiele told Mr. McCray that he is trying to focus him on satisfying the standards that the Board can give him what he wants.

Mr. McCray presented pictures of fences of neighbors and statements from neighbors; the pictures were placed on the overhead projector for viewing. Ms. Ross questioned a couple of the pictures which showed a fireplace on the house, which would mean that it was probably the side of the house not the front.

Mr. McCray stated that he objects to the due process that he has received that he had been subjected to with the Zoning Notice of Violation. In line 5 of a paragraph the words "decision made" is used that was posted on his front door and issued by Tim Cartner. Line 8 uses the word "decision"; line 5 uses the word "appeal" and he assumes the City has attempted to provide a notice by giving notice of decision rather than notice of an alleged violation giving him the opportunity to be heard. If no further action were taken this would take his property because it is a decision made by a legal entity to which he was not afforded procedural due process according to the 14th Amendment because he was not a party to the decision and did not get an opportunity to defend himself. It is also a violation of substantive due process because he has now had to pay \$378 simply to appeal the decision that has been made. Mr. Van De Wiele stated this would be the forum to appeal this although there is no appeal on the agenda

today. When a City Official makes this type of decision and provides a person with their appeal right, the Appeal of that Administrative Official decision comes to the Board of Adjustment. There are two ways of curing the notice; it is either to appeal it which would be before this Board or a Special Exception is received which remedies the violation. Depending on what the decision of this Board is, if the applicant or the City does not like the Board's decision then that can be appealed to the District Court here in Tulsa.

Ms. Radney asked Mr. McCray if when he made the decision to erect the fence where it is located now, he did so conscientiously. Mr. McCray answered affirmatively. Ms. Radney asked Mr. McCray if he was aware that he was closer to the street than the norm. Mr. McCray stated he put up a fence a long time ago when his issues first started and a neighbor stated that he did not like it or the location of the fence, and he took it down of his own accord. Ms. Radney asked Mr. McCray where that fence was located in relation to the trees that once use to parallel to Rockford. Mr. McCray stated the old fence was much closer to the City's property and in front of where the current fence is now, and the current fence was erected back farther because he made sure he was not on City property.

Ms. Ross asked Mr. McCray if his property was all one lot when he purchased it or was it two lots that have been combined. Mr. McCray stated that it is still one lot and has always been one lot; he would like to split it one day.

Ms. Ross stated the Board has a Zoning Code in place that has to be followed and the Board is only allowed to grant Variances when specific circumstances exist. She thinks the point that has been missed today is that this isn't because the City wants to take the property that they place limits on the fence heights in the front yard, it is because it does not look good in neighborhoods. If it is allowed in one place it would be allowed everywhere.

Mr. McCray asked if INCOG suggested the zoning ordinances to the City, didn't the Board play a part in suggesting the rules? In what part of government function does continuity and uniformity have toward the legitimate objective of government? The number one point of government is safety and security. That should be paramount. If the City can have an ordinance speaking to what can or cannot be done with a person's property, that does not reasonably interfere with other people's uses of their property, what keeps the Board from making rules like everyone's house has to be pink?

Mr. Van De Wiele stated the comment focuses the real issue of, he thinks, what is and what is not a reasonable restriction on the use of one owner's property. If Mr. McCray would like to see the ordinances changed this is not the venue for that, the Board is tasked with a very limited quantum of authority and there are parameters to exercise them.

Interested Parties:

There were no interested parties present.

Comments and Questions:

Ms. Back stated that in the cases where the Board has approved the taller heights, the opaqueness of the fence, the transparency of the fence, has played a major part in the decision. Ms. Back stated that this fence is not in keeping with the spirit and intent of the Code and she cannot support this request. If the fence were to be moved back to be even with the front of the house, she could support it.

Mr. Van De Wiele stated he does not have as much an issue with the fence as some of the other Board members may, there is not another driveway at this T intersection that the fence would compromise the line of sight. Mr. Van De Wiele stated that he could support a motion in favor of this request.

Ms. Radney stated that the argument could be made about the unusual size of the lot and the neighborhood that it is in, the applicant does have a front street yard that is unusually long so that to the extent that his house is located to the far southern edge of the property line she could see that if she wanted to secure the northern edge that you would not intuitively believe that there would be an intrinsic problem with having an extension of the fence. The issue before the Board is whether it is in harmony with the spirit and intent of the Code and detrimental to the public welfare. Ms. Radney stated that she does not like the fact that the fence comes all the way up to the driveway so she would be concerned about the speed that people are transiting on Rockford and concerned about not being able to have a clear sight line from the applicant's driveway. Ms. Radney stated that if the applicant were to get a better triangular sight line from his front porch and out to the street, if he were willing to do that, she would not have a problem with supporting the request.

Ms. Ross disagreed. In looking at the picture, if the fence was erected along the side of the house two-thirds of the property would still be enclosed. Any equipment, bicycles, or anything stored outside there is plenty of room for storage and no Special Exception would be needed. Safety and security are very important, but lots of people have fenced yards and lots of people live in areas where things are stolen but the fence is still in a reasonable location, not in front of the house. Ms. Ross stated that she does agree with Ms. Radney that it does create a sight line problem pulling out of the driveway, and she personally does not like seeing fences in the front yard.

Mr. Bond stated that he thinks the City does not like seeing fences in the front yard either and believes that is why this exists in the Code. He does not think this in harmony and spirit and intent of the Code. Mr. Bond stated that it will be injurious to the overall neighborhood by creating a compound look. The Code is in place for a reason. Crime and security are always going to be a persistent issue no matter what part of Tulsa you live in so that is not persuasive to him. Mr. Bond stated that he takes it personally when someone accuses him of not respecting someone's constitutional rights.

Ms. Radney stated that she still maintains that the unusual shape of the lot because on most residential lots the house would be oriented differently so that the depth of the lot would be his back yard and his side yard. In the applicant's particular case his front yard the majority of the length of the fence is for all intents and purposes the applicant's rear yard. Ms. Radney stated she is a realtor, she is not a fan of compounds and does not like them. At the end of the day they do not really add to the aesthetics of a neighborhood, and that goes against the idea of getting the best and highest use and the kind of improvements that add value to a neighborhood. Ms. Radney stated she is familiar with the neighborhood and she does not think that it is that exceptional within this area, so she would be inclined to support the request with a notch in the fence.

Board Action:

On **MOTION** of **RADNEY**, the Board voted 2-3-0 (Radney, Van De Wiele "aye"; Back, Bond, Ross "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Special Exception to allow a fence to exceed 4 feet in height within the required street setback (Section 45.080), subject to conceptual plan 3.7, 3.8, 3.9, 3.10 and 3.11 of the agenda packet. The fence is to be moved back 90 degrees within 15 feet of the southward approach toward the front line of the house to meet the required setback of 25 feet as it connects with the main house. 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:

E1/2 LOT-7-BLK-1, RIVERVIEW ACRES ADDN, City of Tulsa, Tulsa County, State of Oklahoma

MOTION FAILS

On **MOTION** of **BOND**, the Board voted 3-2-0 (Back, Bond, Ross "aye"; Radney, Van De Wiele "nays"; no "abstentions"; none absent) to **DENY** the request for a Special Exception to allow a fence to exceed 4 feet in height within the required street setback (Section 45.080); for the following property:

E1/2 LOT-7-BLK-1, RIVERVIEW ACRES ADDN, City of Tulsa, Tulsa County, State of Oklahoma

22591—Claude Neon Federal Signs

Action Requested:

Variance to permit a ground sign to be located less than 50 feet from an abutting R-3 District (Section 60.040-B.3); Modification of a previously approved site plan (BOA-18722). **LOCATION:** SE/c of South Hudson Avenue & East 61st Street South (**CD 9**)

Presentation:

James Adair, Claude Neon Federal Signs, 1225 North Lansing, Tulsa, OK; stated this a Variance for a sign for St. Francis Ave Maria House.

Ms. Back asked Mr. Adair if this is a St. Francis project, as in a hospital project. Mr. Adair stated that St. Francis owns it. There are children there for the hospital staff, but the facility is also open to other people for child care. Ms. Back stated that she is not aware that her firm is working on this project, but St. Francis is one of the firm's clients.

Mr. Adair stated there have been several occasions in the last year where there was an emergency from the pick up of a child by someone other than the regular person who picked the child up or dropped them off, and the new person could not find the facility. Most people that drive on 61st Street have no idea what the building is or who owns the building. The idea of placing a sign is to identify the facility. The OL sign code would allow a 32-foot sign at 20 feet tall, and St. Francis wants to minimize the sign so the sign will be 12'-7" square feet and 12'-10" in height. Placing the sign anywhere other than the proposed site would place the sign inside the wrought iron fence in the children's play area. If the sign is moved to the western extreme the fence would not allow the sign. The lighting in the sign will be a constant solid light. Mr. Adair stated that he was contacted by a property owner that has a bedroom upstairs and he does not want any added illumination in the area at night, and he suggested turning the sign off at 9:00 P.M. St. Francis has agreed to this time restriction.

Interested Parties:

Aaron Goodman, 6126 South Hudson, Tulsa, OK; stated he is not here to protest the sign and he has the informal backing of the home owner's association. The issue is the light pollution. The Ave Maria House has very bright security lights and those lights shine right into his bedroom. Security lights are important, and he understands that. From his perspective he wants the facility to have their sign, and he would not object to a time limitation for the sign. This is a day care facility and they do not have functions there at night, so he would ask to have the lights off at 9:00 P.M. and come back on at 7:00 A.M.

Comments and Questions:

None.

Board Action:

On **MOTION** of **BOND**, the Board voted 4-0-1 (Back, Bond, Radney, Ross "aye"; no "nays"; Van De Wiele "abstaining"; none absent) to **APPROVE** the request for a Variance to permit a ground sign to be located less than 50 feet from an abutting R-3 District (Section 60.040-B.3); Modification of a previously approved site plan (BOA-18722), subject to conceptual plans 4.17, 4.18, 4.19, 4.20, 4.21, 4.22, 4.23, 4.24, 4.25 and 4.26 of the agenda packet. The Board has found the hardship to be the adjacent structures and fences and the lack of visual acuity thereof. The sign is to be operational from 7:00 A.M. to 9:00 P.M. only. The Board finds that the requested Modification will

be in harmony with the spirit and intent of the Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. The Board finds that the following facts, favorable to the property owner, have been established:

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

LOT 1 BLK 1, WARREN CENTER EAST AMD, City of Tulsa, Tulsa County, State of Oklahoma

22592—Crown Neon Signs – Gary Haynes

Action Requested:

Variance to increase the allowed display surface area for a sign and to permit the sign to be oriented along South Lewis Avenue (Section 60.080-C); Variance to permit a dynamic display sign to be located within 200 feet of an R District (Section 60.100-F). **LOCATION:** 1205 South Gillette Avenue East **(CD 4)**

Presentation:

Gary Haynes, Crown Neon Signs, 5676 South 107th East Avenue, Tulsa, OK; stated that where the sign is going to be placed is fenced off and will be inside the property line inside the fence. The owner is aware of the times of being able to run the board. The new sign will have red neon around the top cabinet to make it look aesthetically pleasing. Mr. Haynes stated that no one will be affected by the sign. There is an OM District south of the subject site, and it has only one building there.

Mr. Van De Wiele asked Mr. Haynes how the three buildings on the four lots are used. Mr. Haynes stated the first two on 12th Street are in the OM District and are commercial structures. The western most of the four lots is a residential use.

Mr. Van De Wiele asked Mr. Haynes if the sign was to be oriented north and south. Mr. Haynes answered affirmatively.

Ms. Back stated there are many signs on the fencing and the overall sign budget is busted because the sign actually goes over the square footage. Ms. Back asked if the signs on the fence were going to be removed. Mr. Haynes stated the two Variances he is requesting are the only thing that was given to him when he filed for his permit. Ms. Back asked Mr. Haynes if he submitted all the other signs that exist on the property. Mr. Haynes stated the only other signs are on the fence line and he believes the City has seen photos of it because he submitted pictures. Ms. Back just wanted Mr. Haynes to be aware that when he went in for permitting there may be a sign budget issue.

Interested Parties:

Dustin Davenport, 1205 South Gillette, Tulsa, OK; stated he is the owner of Discount Garage Door. He purchased the subject building about a year ago and since he purchased the building the City has done a whole lot of work on Lewis, which all good but for his building it turned out bad. The City shifted the site's driveway toward the south because they installed an island in the middle of Lewis. A person has to be traveling north bound to see the building. Mr. Davenport stated that he installed the black out on the fence because he was having a problem with theft, and when he found the black out screening could be printed on, he had company information printed on it. One of his big problems is that customers cannot find his location, so the idea is to place a sign on the property.

Comments and Questions:

Mr. Van De Wiele asked Mr. Wilkerson if this is considered a signalized intersection because of the railroad. Mr. Wilkerson stated that is not something that has been discussed with the Building Permit Office. Mr. Van De Wiele asked Mr. Haynes if he had discussed that concern with the Building Permit Office. Mr. Haynes stated there will be arms added in the future on both sides of the island for the railroad track.

Board Action:

On **MOTION** of **BACK**, the Board voted 5-0-0 (Back, Bond, Radney, Ross, Van De Wiele "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Variance to increase the allowed display surface area for a sign from 48 square feet to 80 square feet and to permit the sign to be oriented along South Lewis Avenue (Section 60.080-C); Variance to permit a dynamic display sign to be located within 200 feet of an R District (Section 60.100-F), subject to conceptual plans 5.10 and 5.11 of the agenda packet. The sign is to be turned off between the hours of 9:00 P.M. and 7:00 A.M. The sign budget for the fence advertising is not included in the approval of these two Variances and any additional Variance that may need to be included for being located close to a signalized intersection is not included. The Board has found the hardship to be the irregular shape of the lot, the location of a railroad crossing next to the long side of the lot, the restructuring of Lewis Avenue, the relocation of the applicant's driveway and the median that was installed in front of the subject property creating a difficulty for

clients to access the property. 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 1 BLK 7 & PRT VAC RR R/W BEG 53.61NW MOST SLY NEC LT 4 BLK 7 TERRACE DRIVE ADDN TH NW APR 278.39 NE50 SE252 S APR 72.08 W12.75 NW15.89 NW12.52 POB SEC 7 19 13 .331AC, TERRACE DRIVE ADDN AMD SUB B2-3&7, TERRACE DRIVE ADDN, City of Tulsa, Tulsa County, State of Oklahoma

22594—Cliff Beam

Action Requested:

Variance to permit part of a structure to be located within the City of Tulsa right-of-way and/or planned street right-of-way (Section 90.090-A). **LOCATION:** 201 East 2nd Street South **(CD 1)**

Ms. Ulmer stated that in the staff report the Variance requests refers to the awning and not the façade.

Ms. Blank left the meeting at 2:33 P.M.

Presentation:

Cliff Beam, 25026 Whippoorwill. Broken Arrow, OK; stated he would like to install awnings on the subject building which are removable awnings. The awnings are an architectural element for the building and serve no other purpose. The awnings match

the existing awnings; they are 10 feet in height and extend 8 feet from the building. The City of Tulsa will grant an agreement with the building owner that should the City need into the public right-of-way, at the owner's expense, the awnings will be removed and then replaced.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **BOND**, the Board voted 5-0-0 (Back, Bond, Radney, Ross, Van De Wiele "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Variance to permit part of a structure to be located within the City of Tulsa right-of-way and/or planned street right-of-way (Section 90.090-A), subject to conceptual plans 6.6, 6.7 and 6.8 of the agenda packet. The Board has found the hardship to be the nature of buildings with zero lot lines that are adjacent to sidewalks, and the replacement of existing awnings. The approval is subject to the pending right-of-way agreement and removal with the City of Tulsa. 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 5 BLK 87, TULSA-ORIGINAL TOWN, City of Tulsa, Tulsa County, State of Oklahoma

Mr. Van De Wiele recused and left the meeting at 2:37 P.M.

22596—Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C.

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: TENANT SPACE – 6967 East 71st Street South (CD 7)

Presentation:

Courtney Kelley, 320 South Boston Avenue, Suite 200, Tulsa, OK; stated the area is mostly residential, and the only business is to the west and south. Ms. Kelley stated each of the businesses have been identified on the map provided the Board and determined there are no operating dispensaries.

Interested Parties:

Robert Wiruth, 10311 South Braden Avenue, Tulsa, OK; stated he owns duplexes that generates revenue to help him through his retirement years, and he is extremely concerned about this. Mr. Wiruth stated he has a duplex on 67th East Avenue and a duplex on 71st Place, and he thinks the traffic the dispensary is going to generate is not going to be conducive to good family residential property. He asked the Board to deny this request.

Ms. Back asked Mr. Wiruth if his property butted up to subject property or if his property is located down the street. Mr. Wiruth asked Mrs. Wiruth to come forward.

Cheryl Wiruth, 10311 South Braden Avenue, Tulsa, OK; stated she has property near the subject property, and they are located at 6911 and 6913 South 67th East Avenue and 6930 and 6932 East 71st Place. Both of the properties are a block off 71st Street.

Ms. Back asked Mrs. Wiruth if she was aware the dispensary is asking to go into one space inside of an existing strip mall, so the commercial traffic is already being generated at the location.

Mr. Wiruth came forward and stated that he does not have a problem with the commercial traffic, he has a problem with the traffic the dispensary will generate. This will cause the wrong kind of people to get into the neighborhood.

Ms. Back stated a medical marijuana dispensary is actually not a recreational marijuana dispensary. People that are going to the medical marijuana dispensary are people that use the substance for a medical purpose or pain management purpose not a recreational purpose, and the people will have a medical prescription for the medical marijuana.

Mr. Wiruth stated that everyone knows there are supposed to be prescriptions for opioids, and we all know how that goes. Opioids have proven that the prescription idea does not work.

Mr. Bond asked Mr. Wiruth if he had an objection to the spacing verification. Ms. Ross stated that all the applicant is asking the Board to do today, and all the Board has the jurisdiction to do today is to verify that there are no other medical marijuana dispensaries within a 1,000 feet of the subject location. The Board does not have the authority or jurisdiction to hear objections to one going in at the subject location unless there was another one within 1,000 feet, and there is not. Ms. Ross stated that she is not sure where Mr. Wiruth can take his concerns.

Ms. Back stated that as the Chairwoman she wanted to give Mr. Wiruth the chance to be heard, but what is before the Board today is a spacing verification to determine if there is another medical marijuana dispensary within a 1,000 feet of the subject location. That is all that is before the Board today; the applicant is allowed to be there if they meet the spacing requirement.

Comments and Questions:

None.

Board Action:

On **MOTION** of **BOND**, the Board voted 4-0-1 (Back, Bond, Radney, Ross "aye"; no "nays"; Van De Wiele "abstaining"; 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 LT 3 BEG SWC TH N301.76 E396 S301.76 W396 POB LESS S10 THEREOF
BLK 2, PLAZA VILLAGE AMD SKYVIEW CENTER, City of Tulsa, Tulsa County,
State of Oklahoma**

Mr. Van De Wiele re-entered the meeting at 2:47 P.M.

22697—Cox Communications

Action Requested:

Modification of a previously approved site plan (BOA-19395). **LOCATION:** 2115 South 120th Avenue East **(CD 6)**

Ms. Blank re-entered the meeting at 2:51 P.M.

Presentation:

Wayne Frank, 2929 North Central Avenue, Phoenix, AZ; stated he is the owner's representative.

Mr. Van De Wiele asked Mr. Frank if all he was doing was adding equipment to the site. Mr. Frank answered affirmatively. Mr. Frank stated that one building will be added to the east of the existing building to house communication equipment to expand the facility. Mr. Frank stated that everything sits within the existing setbacks, and there are no other issues on the site that he is aware of.

Mr. Van De Wiele asked Mr. Frank if what he was going to add to the site is similar in size and scale to what exists on the site today. Mr. Frank answered affirmatively. Mr. Frank stated that the existing building is 644 square feet and the additional building will be 792 square feet, and it will be about the same height and size.

Mr. Wilkerson asked Mr. Frank what the other four buildings are, that are shown on page 9.15. Mr. Frank stated that south of each of the buildings there are two mechanical units and that is what is shown on 9.15, and there are two back-up generators and electrical gear.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **BACK**, the Board voted 5-0-0 (Back, Bond, Radney, Ross, Van De Wiele "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Modification of a previously approved site plan (BOA-19395), subject to conceptual plan 9.15 of the agenda packet. The Board finds that the requested Amendment will be in harmony with the spirit and intent of the Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; for the following property:

BEG NEC E/2 NW TH S275 W140 N275 E140 POB LESS N60 THEREOF SEC 17 19 14 .69AC, LESLIE LEIGH SECOND ADDN, City of Tulsa, Tulsa County, State of Oklahoma

OTHER BUSINESS

None.

NEW BUSINESS

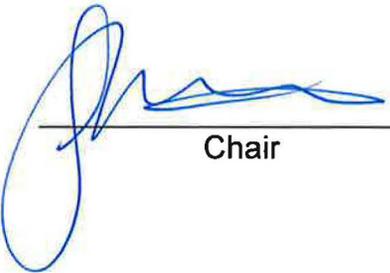
None.

BOARD MEMBER COMMENTS

None.

There being no further business, the meeting adjourned at 2:50 p.m.

Date approved: 3/26/19



Chair