

**BOARD OF ADJUSTMENT**  
**MINUTES** of Meeting No. 1228  
Tuesday, May 14, 2019, 1:00 p.m.  
Tulsa City Council Chambers  
One Technology Center  
175 East 2<sup>nd</sup> Street

| <b>MEMBERS PRESENT</b>                            | <b>MEMBERS ABSENT</b>   | <b>STAFF PRESENT</b>                      | <b>OTHERS PRESENT</b> |
|---|-------------------------|---|-----------------------|
| Van De Wiele, Chair<br>Back, Vice Chair<br>Radney | Ross, Secretary<br>Bond | Wilkerson<br>Ulmer<br>Sparger<br>K. Davis | Swiney, Legal         |

The notice and agenda of said meeting were posted in the City Clerk’s office, City Hall, on May 9, 2019, at 10:47 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 3-0-0 (Back, Radney, Van De Wiele "aye"; no "nays"; no "abstentions"; Bond, Ross absent) to **APPROVE** the **Minutes** of the April 23, 2019 Board of Adjustment Special meeting (No. 1227).

\*\*\*\*\*

**UNFINISHED BUSINESS**

**22619—Christian Harvell**

**Action Requested:**

Variance to reduce the minimum ground floor ceiling height requirement (Table 10-4); Variance to reduce the minimum ground floor window transparency requirement

(Table 10-4). **LOCATION: TENANT SPACE** – 1121 South Lewis Avenue East  
**(CD 4)**

**Presentation:**

The applicant requests a continuance to June 11, 2019 to allow them to receive additional information from the City.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION of BACK**, the Board voted 3-0-0 (Back, Radney, Van De Wiele "aye"; no "nays"; no "abstentions"; Bond, Ross absent) to **CONTINUE** the request for a Variance to reduce the minimum ground floor ceiling height requirement (Table 10-4); Variance to reduce the minimum ground floor window transparency requirement (Table 10-4) to the June 11, 2019 Board of Adjustment meeting; for the following property:

**LTS 15 - 21 BLK 4, BOSWELL'S ADDN, City of Tulsa, Tulsa County, State of Oklahoma**

Mr. Van De Wiele explained to the applicants and interested parties that there were only three board members present today. Any motion will require an affirmative vote from all three board members, so it does not fall to a two to one threshold. When there is less than a full Board the Board will entertain a request from the applicant to continue agenda items to a later meeting date, at which all five members of the Board may be present. If an applicant or an interested party would like to postpone his or her hearing until the next meeting he or she could do so. The audience nodded their understanding and no one came forward to request a continuance.

**22617—Jarrett Metzler**

**Action Requested:**

Variance to allow a detached accessory structure to exceed 500 square feet or 40% of the of the floor area of the principal structure (Section 45.030-A); Variance to permit an accessory building to exceed 30% coverage of the floor area in the rear setback (Section 90.090-C-2); Variance to allow an accessory structure to exceed 10 feet in height to the top of the top plate (Section 90.090.C-2); **Special Exception** to exceed the allowable driveway width within the right-of-way (Section 55.090-F.3). **LOCATION:** 7431 East 7<sup>th</sup> Street South **(CD 3)**

**Presentation:**

**Jarrett Metzler**, 7431 East 7<sup>th</sup> Street, Tulsa, OK; stated that at the last meeting the Board requested information on the siding of the building, and that was forwarded to Ms. Ulmer. The Board also requested for information on the driveway and Ms. Ulmer helped with that research and did obtain that information. The other thing the Board requested were for examples in the neighborhood that had similar buildings as being requested and he has provided that information.

Mr. Van De Wiele asked Mr. Metzler where the other similar buildings were located in the neighborhood. Mr. Metzler had pictures displayed on the overhead projector as he stated that the first building is located on East 4<sup>th</sup> Place, the second building is located on a corner lot and it has been there for quite some time and he does not think there was a Variance requested. Mr. Metzler stated that this particular building has three driveways; there is a double driveway and another driveway going to the shop, and on the front side of the house there is another driveway located on the other street.

Mr. Van De Wiele asked Mr. Metzler where that particular building was located. Mr. Metzler stated that it is located at 4<sup>th</sup> Place and 77<sup>th</sup> East Avenue. Mr. Van De Wiele asked Mr. Metzler on which corner is the building located. Mr. Metzler stated that it is on the northeast corner.

Mr. Metzler stated there is another building located three houses from him toward the west, and it has a five-car wide driveway. The last building, he located is about ½ mile to the west, toward Braden Park, from his property. It is a detached garage that is a lot larger than the house.

Mr. Van De Wiele asked Mr. Metzler if that large building was a detached building. Mr. Metzler stated that it looks like there is a breezeway connecting the building to the house.

Mr. Metzler stated that he moved to Broken Arrow 30 years ago into a million-dollar house with a three-car garage, but he moved back to Tulsa where he wanted to be after his first wife passed away. He has now remarried, and he wants to make a difference to the neighborhood. Mr. Metzler stated that he also has classic cars that he wants to have a home for. He wants to be near Route 66, he wants to have his cars, he wants to be in midtown, and he is already above the value of the house if he were to sell it. He is in the neighborhood to stay, and he knows he is asking for a lot. But when he sees people doing things without asking for a Variance, he finds fault there, but he is trying to do the right thing. He took a risk and paid \$1,000 for stamped drawings for a building that he may not even get, and that was before the application fees for this request.

Mr. Van De Wiele stated that ultimately, the Board has to have a hardship that is unique to the property. The hardship cannot be self-imposed, and it cannot be a financial hardship. That is what he is struggling with; there are lots in town where the Board has allowed this type of building, but they are usually overly large lots that can swallow a

1,500 square foot building easily. It is not whether the Board likes it or does not like it, the Board has to get over the initial threshold of the hardship.

Mr. Metzler stated that his hardship is that if the Board does not approve his request, he either has to get rid of his cars or he moves. Mr. Metzler stated he has had his car for 30 years, since he was a kid. Mr. Van De Wiele asked Mr. Metzler where the cars were currently. Mr. Metzler stated that he has them at his brother's house in Inola, and they have been there for a year and a half while he has been getting ready for them to be moved. Mr. Metzler stated that he has already spent about \$15,000 on infrastructure getting ready. Mr. Van De Wiele stated that he is not trying to be cold-hearted but when he hears that that sounds like financial and self-imposed reasons. If there is a hardship, he is still looking for it.

Ms. Radney asked Mr. Metzler if he has always stored the vehicles on his private residence. Mr. Metzler answered affirmatively.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

Ms. Back stated that she too is having a difficult time coming up with hardship that lines up with the Code. It is not that she is not sympathetic, and it is not that she does not believe Mr. Metzler is doing a wonderful thing to bring up property value. There are three Variances in this request and all she is hearing is financial hardship, and it is interpreted by Mr. Metzler that he will have to sell. The hardship is not the shape of his lot or the topography of his lot, she cannot find a hardship.

Mr. Van De Wiele stated that is the same position that he is in. Mr. Van De Wiele stated that he does not know, even if it were an attached garage, if this size building can be put on this lot. Mr. Wilkerson stated that staff reviewed the open space calculation, and Mr. Metzler is able to satisfy the open space calculation. Mr. Wilkerson stated that the site plan would determine that, but it looks like Mr. Metzler could do that.

Mr. Van De Wiele stated that part of the concern he has is putting this type of industrial looking building, that is larger than the principle structure, in the middle of a neighborhood.

Ms. Radney stated that she is inclined to support the request. She agrees with the concerns about being able to enumerate a hardship.

Mr. Van De Wiele stated that there may be a way for Mr. Metzler to do what he wants, and that is the point of the Code, maybe not everything he wants but there may be a way to build a garage in the rear of the property but not this particular building.

Ms. Back stated that this building is a prime example of why the Board requests the garage is in keeping with the finishes of the house, because it obviously does not match the style or character of the house.

Ms. Radney stated that she thinks the way the site plan is laid out the garage will not be visible from the street. If there were a neighbor across the street that would be the neighbor that would have most objectionable view if there were such a neighbor.

Mr. Van De Wiele stated that the proposed building is going to be the majority of the back yard. Mr. Van De Wiele asked Mr. Swiney that if the motion goes 2-1 either way, both of the motions will fail procedurally, what does that do to this request? Mr. Swiney stated that if there is a motion to approve, for example, and only two votes are in favor the motion fails. Mr. Metzler will be back where he started from, which is denied. If there is a motion to deny and the motion is seconded, if that fails it is not a motion equivalent to an approval. The request would be denied.

Ms. Back stated that if the applicant were inclined to want more Board members present, he could possibly request another continuance because if the Board votes today it might not go in the favor of the applicant. Mr. Swiney stated the applicant can request a continuance, but that option was already offered.

Mr. Van De Wiele asked Mr. Metzler to come back to the podium. Mr. Van De Wiele stated this Board tries to get homeowner's the relief they are asking for, and he thinks the Board's approval rate speaks to that. Mr. Van De Wiele stated that he is having a hard time with the hardship. There are certainly houses in the area that have been added on to, had garages built to them, but he suggests that the case be continued because the comments he has heard today the vote will not go in your (Mr. Metzler) favor today. Mr. Van De Wiele asked Mr. Metzler if he would like to have his case continued or if he would like to have the Board act upon his request today. Mr. Van De Wiele stated that if the case were continued there may be two more people on the Board that may find a hardship in his favor, or the construction plan may be able to be adjusted so that this is an attached garage and the relief being requested is not needed. Mr. Metzler stated that on the back of the house, where the old overhang was, he has a louvered overhang built for \$20,000 so there is no way to attach a building on that side of the house, so the garage will have to be detached. Mr. Metzler asked the Board if he were to scale the garage down to maybe 1,500 square feet is it possible because he does not know how this works. Mr. Van De Wiele stated that in his opinion as a Board member, it is two things; it is the size and the scale of the garage in comparison to the lot and to the principle structure. He thinks the garage is too big for the lot and for the principle structure. And then, the Board is routinely asked about how does it look in comparison to the principle residence. Is it built out of the same materials, does it have the same roof line, the same roofing materials, that sort of thing so we are not ending up with what could be an industrial warehouse in the middle of the neighborhood? Those are the kinds things that the Board typically looks at.

Mr. Metzler stated that the problem is that with a regular garage, the cars need to have a little bit of a lift to get underneath them, and that was the purpose for the height. With his disability it is hard to get on a creeper to do so, so he was going to have a lift so he could get under the car to be able to work on the car.

Mr. Van De Wiele asked Mr. Metzler if extra time would help him at all. Mr. Metzler stated that the only thing he would know to do is to scale the building down but he has paid \$1,000 for stamped drawings that the Board has today so if he scales the building down he has to go back to Honeycutt Construction and pay another \$1,000 for stamped drawings, and come back to the Board not knowing that it will be approved. Mr. Van De Wiele stated an applicant does not have to have stamped drawings to make an application, but they are needed for a building permit. Mr. Metzler stated the City required them before he came to the Board of Adjustment. Mr. Van De Wiele stated the Board does not have a requirement of stamped engineered drawings.

Ms. Back asked Mr. Metzler if he applied for a building permit before coming to the Board of Adjustment. Mr. Metzler stated he did not know the process. Mr. Van De Wiele stated that is a building permit issue. Mr. Metzler stated that he was told he had to do that before he went to INCOG, so maybe there is a break down in the process.

Mr. Van De Wiele asked Mr. Metzler if he would like the Board to continue his case to another meeting, or would he prefer the Board act upon his request today? Mr. Metzler stated that he does not know what the happy medium would be, and he does not know what he could provide in two weeks if he does not make an adjustment and he does not know what that adjustment could be.

Ms. Back asked Mr. Metzler for the square footage of his house. Mr. Metzler stated that it is about 1,100 square feet.

Ms. Radney asked Mr. Metzler if there was no way he could see for attaching the garage to the house. Mr. Metzler stated that if he had not had Four Seasons construct the \$20,000 Equinox louvered overhang he probably could, but he spent the money and there is no way he could attach it at this point.

Mr. Van De Wiele stated that he believes a breezeway connection between what Mr. Metzler would see as a detached garage, but technically it is an attached garage. Something like that might help.

Ms. Back stated the Mr. Bob Kolibas, upstairs, could help Mr. Metzler determine what would make the garage an attached structure.

Ms. Radney stated that it is her understanding that if the garage were an attached structure Mr. Metzler would be able to build it by right.

Mr. Van De Wiele stated that as one Board member the best he can do today is to offer a continuance.



Mr. Van De Wiele asked Ms. Carson where the front door of the house is located. Ms. Carson stated that it is the right side. Mr. Van De Wiele asked Ms. Carson if the carport is to be removed. Ms. Carson answered affirmatively. Mr. Van De Wiele asked Ms. Carson if the carport can be removed without any structural issues but removing the front addition will cause the house to fall. Ms. Carson answered affirmatively.

Mr. Van De Wiele asked Ms. Carson to state her hardship. Ms. Carson stated the hardship is that the structure has been in existence for so long, at least 20 years.

Ms. Radney asked Ms. Carson if she has a structural engineer's report. Ms. Carson stated that she does not. Ms. Radney asked Ms. Carson who inspected the property and advised her that the front section is actually an integral part of the structured house. Ms. Carson stated that no contractor has gone to the house, but her client has renovated other houses but there has been no structural engineer. Ms. Radney asked Ms. Carson if the house had been purchased with cash or was it financed? Ms. Carson stated that she does not know.

Mr. Van De Wiele stated that he finds it hard to believe that this box (addition) could not be pulled off the house with very little issue. He guesses that it is a square footage issue for Ms. Carson's client.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

Ms. Radney stated that in the absence of having an engineer's report she does not think the Board has enough information to be able to make a judgment about removing the structure is going to do damage to the property. A licensed engineer would be able to tell Ms. Carson and the Board that, and also be able to show the Board what might have to be done to remediate any damage that was done to the structure.

Ms. Back stated the Board is to stay with the Code and what is the hardship to reduce the setback, and the hardship is that the removal would cause structural damage. There is no evidence to that, and she thinks it would cause a financial hardship.

Mr. Van De Wiele stated that there is a balance in some of what the Board does between the pure aesthetics of it and the hardship get blended together. Part of what is working in the applicant's disfavor is that somebody put a brown box on the front of the Craftsman style house, and it is not a good looking addition. If somebody had bumped the front of this property out by a few feet and it had a pitched roof with white clap board and pretty front porch the odds would be much better for the applicant. That is some of what works in the applicant's favor or disfavor in these types of settings.



Ms. Radney stated she would be more inclined to be more supportive if the applicant would present something that would allow the Board to understand that the addition is actually structurally sound.

Ms. Back stated that if the client were to modify the structure to make it enhance the house and was a part of the house instead of the brown box, she would be more inclined to support this request.

**Board Action:**

On **MOTION** of **BACK**, the Board voted 3-0-0 (Back, Radney, Van De Wiele "aye"; no "nays"; no "abstentions"; Bond, Ross absent) to **CONTINUE** the request for a Variance to reduce the required street setback in an RS-3 District (Table 5-3) to the June 11, 2019 Board of Adjustment meeting; for the following property:

**LT 281 BK 1, RODGERS HGTS SUB, City of Tulsa, Tulsa County, State of Oklahoma**

**22627—Amanda Prickett**

**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: 3735 South Harvard Avenue East, Unit A (CD 9)**

**Presentation:**

**Amanda Prickett**, 3735 South Harvard Avenue, Suite A, Tulsa, OK; no formal presentation was made at this time.

**Travis Horton**, 2021 South Lewis Avenue, Suite 520, Tulsa, OK; no formal presentation was made at this time.

Mr. Van De Wiele stated the Board has the spacing exhibit on page 5.6. What has thrown this into a different situation is the existence of another licensed dispensary, but the dispensary does not have a Certification of Occupancy or it has not had its spacing verified from another dispensary in the same strip center. Mr. Van De Wiele asked the applicant to shed some light on the situation and from what is understood about the timeline of the competing dispensary.

**Travis Horton** came forward and stated that neither entity is grandfathered in, they are both after the December date, so a Variance is required. Both obtained a license in February of this year. Ms. Prickett's Certificate of Occupancy was obtained in March.

Mr. Van De Wiele asked if this was the same landlord for both dispensaries. Ms. Prickett answered no. Mr. Van De Wiele asked if the dispensaries were in the same center. Ms. Prickett stated the very large part of the shopping center is detached from

the other two buildings. Mr. Van De Wiele asked Ms. Prickett if she was on the far left side of the center. Ms. Prickett answered affirmatively, near where the old barber shop was located. Mr. Van De Wiele asked Ms. Prickett if that was a separate building from the rest of the center. **Mr. Horton** stated that it appears as one building but it is not. Ms. Prickett stated that the buildings are very close and are the same color. Mr. Van De Wiele asked Ms. Prickett if she was the only occupant of the building beside the tattoo parlor. Ms. Prickett answered affirmatively.

Mr. Van De Wiele asked Ms. Prickett if she had her Certificate of Occupancy and has her license from OMMA. Ms. Prickett answered affirmatively. Mr. Van De Wiele asked if those were received after December 1<sup>st</sup>. Ms. Prickett answered affirmatively. Mr. Van De Wiele asked Ms. Prickett if the only other dispensary that she is aware of is the one under discussion today. Mr. Horton answered affirmatively. Mr. Horton stated that his client has even stated that she went through the OMMA website and searched for any other dispensary in the area. Mr. Horton stated that his client thought they had a location with the proper 1,000-foot spacing requirement and have made their investment.

Mr. Van De Wiele asked Mr. Horton if the dispensary was up and running at this point. Mr. Horton stated the dispensary is not selling at this time and only doing pre-business type business.

Mr. Van De Wiele asked Mr. Horton if the dispensary located to the south is open to public. Mr. Horton answered affirmatively and stated they are actually selling.

**Interested Parties:**

**Nancy Johnson**, 12929 East 21<sup>st</sup> Street, Suite F3, Tulsa, OK; stated she is the secretary for the company and is the bookkeeper that has the 3747 location.

Mr. Van De Wiele asked Ms. Johnson what the name of that entity is. Ms. Johnson stated the actual entity is Natural Leaf Corporation, the name of that location is Canna Club Dispensary.

Mr. Van De Wiele asked Ms. Johnson if Canna Club has a license from OMMA. Ms. Johnsons answered affirmatively and stated that it was obtained on February 12<sup>th</sup>. Ms. Johnson stated the occupancy license has been applied for, but it has not been received as of yet.

Mr. Van De Wiele asked Ms. Johnson if the spacing verification has been applied for. Ms. Johnson stated that it has not. Mr. Van De Wiele asked why the spacing verification had not been applied for. Ms. Johnson stated that she did not know to do so.

Mr. Van De Wiele asked Ms. Johnson if the dispensary was open to the public and selling products. Ms. Johnson answered affirmatively and stated the dispensary opened on April 18<sup>th</sup>.

Mr. Van De Wiele asked Ms. Johnson if she was the only one in attendance from Natural Leaf Corporation or Canna Club. Ms. Johnson stated that she was not, the President of the corporation is here also.

**Mohammed Ibbini**, 3747 South Harvard, Suite D, Tulsa, OK; no formal presentation was made by the interested party.

Mr. Van De Wiele asked Mr. Ibbini how he was able to open his business without a Certificate of Occupancy and without a spacing verification. Mr. Ibbini stated he rented the space a year ago and when he posted the sign "Opening Soon" the Fire Marshal (a lady) came and told him he had to have a Certificate of Occupancy and he sent it to them, and he was told he could open.

Mr. Van De Wiele asked Mr. Ibbini when he received his OMMA license. Mr. Ibbini stated that it was February 12<sup>th</sup>, and it will expire February 17, 2020.

Mr. Van De Wiele asked Mr. Ibbini if he opened for business on April 18<sup>th</sup>. Mr. Ibbini answered affirmatively.

Mr. Van De Wiele asked Mr. Ibbini what he has been doing on the property since he has been leasing it for a year. Mr. Ibbini stated he had a smoke shop business. Mr. Ibbini stated the landlord knew he was going to open a dispensary as soon as he received his license, so she increased the insurance on the building, and he pays it. Mr. Ibbini stated that he has a signed five-year lease. Mr. Ibbini stated he even placed a sign in the window, "Coming Soon – Canna Club Dispensary".

Mr. Van De Wiele asked Mr. Ibbini when the sign was posted in the window. Mr. Ibbini stated that it was two or three months ago.

**Greg Norris**, 8840 North 300 Road, Okmulgee, OK; stated he is assisting in obtaining the Certificate of Occupancy and he is a real estate broker in Tulsa. Mr. Norris stated that it seems like there is a problem with the State, they seem to be able to figure out the 1,000 feet from a school, but they keep issuing licenses to businesses next to one another. He hopes the Board can convey that to the State. It is a hardship not only the applicants but a hardship on the public. These people are putting their life savings into these businesses, and then they find out they cannot open because there is a problem. It is really a matter of the State not issuing a license to someone that is located three doors away.

Mr. Van De Wiele stated that the 1,000-foot spacing is not the State of Oklahoma, it is the City of Tulsa. Mr. Norris stated that he knows that, but the State is aware of it. Mr. Van De Wiele stated that he did not know if the State was aware of this, but there is certainly the concept that all citizens are charged with knowing the law whether or not they actually know it. He cannot imagine the Board will ever be in the position to tell the State of Oklahoma that they have to police the 1,000-foot spacing in the City of Tulsa.

Mr. Norris asked if that means the City of Tulsa is not going to protect the public from that issue. Mr. Van De Wiele stated that is what the City Board of Adjustment is for, and the City of Tulsa cannot make the State of Oklahoma police the 1,000-foot spacing. Mr. Van De Wiele stated that he understands the frustration. Mr. Norris stated a lot of these cases are going to come up because of the indiscriminate giving of the licenses.

**David Hall**, 3805 South Gary Place, Tulsa, OK; stated he lives in the neighborhood adjacent to the subject site, and he represents the residents in the adjacent neighborhood, and everyone advocates that the Board honor the 1,000-foot spacing. The residents see the new environment of the dispensaries as uncertain as for the quality of the business and the longevity. Ranch Acres is the neighborhood that is adjacent to the subject site and it has been added to the National Historic Places register in 2007, and the residents wish to preserve that to the best of their ability. The residents have done research and see that residential resale values are affected negatively by the presence of a dispensary. While there is not a lot of data available for that there is data that suggests it and that is a concern to the residents. Mr. Hall presented a list of signatures from many of the residents that are in proximity to the subject site.

Mr. Van De Wiele stated that this case is unique because of the two competing interests. The Board is not here to grant or deny any of the spacing verifications, it is really a matter of whether there is another dispensary within a 1,000-foot radius. On this type of application that is all the Board is being asked to do and it is all the jurisdiction the Board has to do. The Board verifies spacing on liquor stores, bars, billboards, day care centers, and all kinds of things. It is really just a factually driven question of is there anything else in that 1,000-foot donut that would cause the Board not to accept the verification of spacing. Mr. Van De Wiele thinks that what the residents of Ranch Acres are saying is that they do not want two dispensaries, and he appreciates that they do not want any one dispensary. Mr. Van De Wiele asked Mr. Hall if he had an opinion as to the one that is before the Board today. Mr. Hall stated that there is uncertainty regarding the new laws and what the affects will be ultimately, so it is the unknown. During this period of the unknown there are laws that govern where the dispensaries can be placed in relation to each other, so the residents ask the Board to uphold that statute.

**Rebuttal:**

**Travis Horton** came forward and stated that in regard to the competing interests and the neighborhood, if the standard were to stick a sign saying “dispensary” what a potential businessperson would do is go around the neighborhood and place signs everywhere to preserve there 1,000 feet. It sounds cold and harsh, but people are always taught that ignorance of the law is no excuse. His clients came to him with this very issue saying that when they rented the property, and their first payment was in January 2019, they asked what they needed to know and what the proper process was. The INCOG website there is a sample that could be followed exactly and know what needed to be done. Mr. Horton stated that he instructed his clients on that and they

followed that process. He is sympathetic to the other party's investments, but his client has also made investments financially into the business and has followed the ordinances and the laws of the state. His client has not dispensed any marijuana until they were able to do so. Mr. Horton believes his clients have followed the process and were first in line and it needs to be recognized as that. It may have been the notices that were sent on his client's behalf that actually caused the other interested party to realize there was something more they needed to do.

Ms. Radney asked Mr. Horton when his clients leased the building. Mr. Horton stated the first payment to the landlord was January 17, 2019, and that was based on research.

Mr. Van De Wiele asked Ms. Prickett to describe her process for finding the location. Ms. Prickett stated she drove around areas that she liked and felt that it would be a good spot for a dispensary. She would then drive around checking the 1,000-foot radius to make sure there were no schools or churches or other dispensaries. She would then check Google Maps for any conflict.

**Comments and Questions:**

Mr. Van De Wiele stated the Board is being asked to verify spacing from one dispensary from another, and he asked Mr. Swiney if the Canna Club Natural Leaf Corporation smoke shop is a medical marijuana dispensary without having a Certification of Occupancy and not having a spacing verification accepted. Mr. Van De Wiele asked how the Board could accept one verification of spacing if there is another dispensary selling medical marijuana within a 1,000 feet other than to say what the interested party is doing is not a medical marijuana dispensary. Mr. Swiney stated the Zoning Code states a medical marijuana dispensary may not be located within 1,000 feet of another medical marijuana dispensary; it does not say within 1,000 feet of another legally operating medical marijuana dispensary. He thinks that is presumed, that any other medical marijuana dispensary has to be legally in operation. There are three elements that have to be observed before a medical marijuana dispensary can be opened; a license from the State, a Certificate of Occupancy from the City, and have the 1,000-foot radius verified by the Board of Adjustment. Mr. Swiney stated that the Canna Club has one of three items, and he does not think there is any question that he does not have a Certificate of Occupancy and does not have the 1,000-foot spacing verification. There is no question, Mr. Ibbini is not lawfully open or not ready to open because he has not observed the three items. Mr. Swiney stated that Ms. Prickett is in the process of obtaining the 1,000-foot spacing verification. If the Board believes that this rule applies to any medical marijuana dispensary, legal or illegal, then the result will be a denial of Ms. Prickett's verification and essentially Ms. Prickett will be out of business; Ms. Prickett will have to go some place else. That vote would have sided Mr. Ibbini's operation, The Canna Club, and allow him to operate even though he does not have a Certificate of Occupancy or his 1,000-foot spacing verification. Mr. Swiney stated that would result in an unfair result, if the Board supports his operation and deny Ms. Prickett's operation.

Mr. Van De Wiele stated that he guesses the Fire Marshal inspected the sprinkler system and other items maybe related to the processing.

**Mohammed Ibbini** came forward and stated that he has been in business for ten years, and he started with the license. As soon as he received the license in February, he placed the open soon sign in the window. Then he paid fees for the occupancy. Mr. Van De Wiele asked Mr. Ibbini if he had applied for a spacing verification through INCOG. Mr. Ibbini stated that he does not know what that is, but he did go online, and it showed that there was no one around him. Mr. Ibbini stated that he has been in his location for almost a year, and he has done everything legally.

**Greg Norris** came forward and stated that his clients did apply for a Certification of Occupancy on April 8<sup>th</sup>.

Ms. Radney asked for the date the Fire Marshal completed the inspection. Mr. Norris stated that it would have been prior to April 8<sup>th</sup>.

Ms. Back asked Mr. Norris if his client (Mr. Ibbini) has not applied for a spacing verification at INCOG as of yet. Mr. Norris answered affirmatively.

Mr. Van De Wiele stated that Mr. Horton very eloquently stated that ignorance of the law is no excuse, and this applied to any business. It is beyond just getting a lease. There are other things that have to be done and if a person wants to get into a particular business knowing all the ins and outs of the procedure is required.

Ms. Back stated that a person also needs to know what their zoning is and what is required of that use in that zoning district.

**Mindy Hall**, no address stated and did not sign in; stated that she lives in Ranch Acres. Clearly, she thinks because of the new law there is a lot of uncertainty and she does not see this being the first case before the Board, especially given the large number of applicants in the City. What she has a problem with is that this is not at 900 feet, not at 800 feet, and to skirt around the Variance issue is that this is within about 100 feet.

Mr. Van De Wiele stated that if the Board accepts the verification of spacing today, that is not necessarily going to permit two dispensaries within the 1,000-foot radius. The Canna Club, if the verification of spacing is accepted, will be operating outside of the bounds of the Zoning Code and it would not be allowed to operate there unless a Variance of that 1,000-foot spacing were granted by this Board. That has not been asked for and cannot be asked for at this meeting.

Ms. Hall stated that she does not know where it is valuable in Tulsa to have such an oversaturation of a business in a neighborhood.

Ms. Radney asked Ms. Prickett where she starts for her business, is it at the application for the license with the State? Ms. Radney also asked if there had to be a location

before the application for the license. Ms. Prickett stated that the State does ask for a location address and then it is either approved or denied, and a person can always change the address of the location afterward. Ms. Radney asked Ms. Prickett if she had a physical location in mind when she made her application for her license. Ms. Prickett answered affirmatively and stated that it is the address in question. Ms. Radney asked Ms. Prickett what date she did that. Ms. Prickett stated she applied on February 1<sup>st</sup> and she was approved on February 26<sup>th</sup>. Ms. Radney asked Ms. Prickett when she leased the building. Ms. Prickett stated that she started leasing the building in January. Ms. Radney asked Ms. Prickett when she applied for the lease. Ms. Prickett stated that it was in January; she found the property before she applied with the State of Oklahoma because she wanted to make sure that she had a building within her zoning. Ms. Radney asked Ms. Prickett when she executed the lease. Ms. Prickett stated she signed a check on January 17<sup>th</sup>. Ms. Radney asked Ms. Prickett if that was earnest money or the lease. Ms. Prickett stated that it was the lease.

Ms. Radney stated that as she sees it, all of these people have made investments in preparation to be able to operate businesses, but neither of these two businesses are any more entitled today to sell medical marijuana than the other. Ms., Radney stated that the way she is looking at it is, is there an operating business, a legal entity, that is selling medical marijuana within the 1,000 feet.

Mr. Van De Wiele stated that the conversation he has had with INCOG within the last 24 hours, and the term "land run" was used, the Zoning Code seems to stand for the proposition that having more than one of these dispensaries every 1,000 feet isn't necessarily a good thing. The Board is not here to agree or disagree with that. His struggle is whether through the lack of understanding the law or purposeful ignoring of the law, and he guesses it more of not knowing the law rather than a willful violation of the law. There is a facility selling medical marijuana that should not be because it does not have a Certification of Occupancy and it has not had the spacing verified. Mr. Van De Wiele stated that he does not want to have something the Board does end up with two dispensaries in a location. He does not want to encourage the land run type behavior. He does not know that he sees an answer that satisfies all those wishes.

Ms. Radney stated that as she thinks about the timeline of these cases, locations were secured, licenses were applied for and granted, separate and apart from whether the Canna Club is entitled to be dispensing, there are really narrow timelines. One approval came through on the 22<sup>nd</sup> and the other apparently being granted on the 12<sup>th</sup>. The missing step for the existing business is that, though they have apparently been engaged in some capacity with the City as it relates to securing an occupancy permit, and as part of that occupancy permit step that is when the spacing verification would occur. She does not think the question before the Board is whether they are dispensing legally or not, she thinks it is a question of which of the two dually applied for licenses and locations has standing. The activity going on at the businesses is irrelevant to her. If neither one was dispensing anything, and they both showed up today with the same spacing map, which entity would the Board approve?

Mr. Van De Wiele stated that if there were two applicants in a strip mall and the left end was leased by one person and another person leases the right end, both have OMMA licenses, both have a lease, both have started the Certificate of Occupancy process, and both have filed with INCOG for verification of spacing what does the Board do? Mr. Wilkerson stated that when INCOG takes an application INCOG is looking at the time stamp.

Ms. Back stated this is new to all of the Board, and the Board wants to do what is right. She thinks that the established business was a previous smoke shop and had an established lease, did apply for his OMA license, and she thinks there may have been some confusion when the Fire Marshal gave permission to open but not communicating the full requirement of obtaining a spacing verification. She personally would err on the side of caution, and believe the established business is in the process of getting all of their licensing finalized. She does not think they were knowingly doing anything against what was required. Ms. Back stated that she does not like rewarding bad behavior but in this case, she believes that it was innocent.

Mr. Van De Wiele stated that he thinks there was no ill intent, but he is coming to a different conclusion. He tends to believe that the Canna Club probably did this out of a lack of fully understanding the zoning ordinances. But that is not an excuse. There is an applicant, to their detriment, went through all of the steps in the right order with an attorney that was telling what to do and that there is not another valid medical marijuana dispensary within the 1,000-foot radius, and now the Board is going to tell them no because that is not what he wants to reward. Mr. Van De Wiele stated that he would intend to accept the verification of spacing.

Ms. Radney stated that the process is location, application, license, Certificate of Occupancy, the fact that Canna Club has not completed all of those steps really just goes to the fact that they are not legally conducting business. This is a small community, and everyone is hearing the Board say they are not legally conducting business. That having been said, that does not mean that they are not legally entitled to potentially conduct business in that spot. So, the lease, the application, and the license in that order give the existing business priority. As such she would not be prepared to accept the spacing verification because there is another entity that is licensed within the envelope.

Mr. Swiney stated that the advice is that it would have to be a lawfully operating dispensary, not just any dispensary. If the Board wants to go in a different direction the Board is free to do that. Mr. Swiney stated that he has been looking through the Zoning Code and to grant a Variance requires three votes, to grant a Special Exception requires three votes, but he does not see the requirement of three votes when verifying a spacing requirement. He thinks, in this case, with a three-person Board today a simple majority could pass or defeat the verification.



**Board Action:**

On **MOTION** of **VAN DE WIELE**, 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:

**LT 9 LESS BEG 69E SWC TH E8.8 N0.4 W8.8 S0.4 POB BLK 2, 36TH STREET SUBURB, City of Tulsa, Tulsa County, State of Oklahoma**

**MOTION FAILED** There was no second to the motion.

On **MOTION** of **BACK**, the Board voted 2-1-0 (Back, Radney, "aye"; Van De Wiele "nay"; no "abstentions"; Bond, Ross absent) I move that based upon the facts in this matter as they presently exist, we **REJECT** 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:

**LT 9 LESS BEG 69E SWC TH E8.8 N0.4 W8.8 S0.4 POB BLK 2, 36TH STREET SUBURB, City of Tulsa, Tulsa County, State of Oklahoma**

**22628—Meenakshi Krishnasamy**

**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:** 2811 East 15<sup>th</sup> Street South & 1442 South Delaware Place East (CD 4)

**Presentation:**

**Meenakshi Krishnasamy**, 815 East 3<sup>rd</sup> Street, Tulsa, OK; no formal presentation was made by the applicant.

Mr. Van De Wiele stated the Board has the applicant's spacing map as shown page 6.6.

Mr. Van De Wiele asked Mr. Krishnasamy if he was aware of any other medical marijuana dispensaries within the 1,000-foot radius. Mr. Krishnasamy answered no.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **BACK**, the Board voted 3-0-0 (Back, Radney, Van De Wiele "aye"; no "nays"; no "abstentions"; Bond, Ross 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:

**LTS 18 & 19 & 30 & 31 BLK 5; LTS 20 THRU 29 BLK 5, ROSEMONT HGTS, City of Tulsa, Tulsa County, State of Oklahoma**

**22629—Brian Letzig**

**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: 1212 and 1214 East 1<sup>st</sup> Street South (CD 4)**

**Presentation:**

**Brian Letzig**, W Design, 815 East 3<sup>rd</sup> Street, Suite C, Tulsa, OK; stated there are no other dispensaries within the 1,000-foot radius.

Mr. Van De Wiele stated that for full disclosure the interested party used to be a member of the City Board of Adjustment. Mr. Van De Wiele stated that he served with Mr. Tidwell and Ms. Back was staff at INCOG during his term. Mr. Van De Wiele stated that will not impact his decision. Ms. Back stated that it will not impact her decision either.

**Interested Parties:**

**Michael Tidwell**, 1225 East 2<sup>nd</sup> Street, Tulsa, OK; stated he abuts the subject property. Mr. Tidwell stated that in the past he has always seen signs advertising Board of Adjustment proposed cases and there was never a sign placed on the subject property.

Ms. Ulmer stated that signs are only posted for Special Exception use requests only.

Mr. Swiney asked Mr. Letzig about the address he gave to the Board, because it is the same address as Mr. Krishnasamy. Mr. Letzig stated that is the office address of W Design, but his home address is 3540 South Hudson Avenue.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **BACK**, the Board voted 3-0-0 (Back, Radney, Van De Wiele "aye"; no "nays"; no "abstentions"; Bond, Ross 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:

**LT 12 & E10 LT 13 BLK 14; LT 11 BLK 14; LTS 9 10 BLK 14, BERRY ADDN, City of Tulsa, Tulsa County, State of Oklahoma**

**22630—Bonnie Caldwell**

**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: 623 South Peoria Avenue East, Suite B (CD 4)**

**Presentation:**

**Bonnie Caldwell**, 623 South Peoria, Suite C, Tulsa, OK; no formal presentation was made by the applicant.

Mr. Van De Wiele stated the Board has the applicant's spacing exhibit on 8.6. Mr. Van De Wiele asked Ms. Caldwell if she was aware of any other dispensary in the 1,000-foot radius. Ms. Caldwell answered no.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **BACK**, the Board voted 3-0-0 (Back, Radney, Van De Wiele "aye"; no "nays"; no "abstentions"; Bond, Ross 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:

**LT 17 BLK 1; LT 18 BLK 1 & STRIP 8 WIDE & 130 LONG ABUT NL RETAINED BY CITY, EAST LYNN ADDN, City of Tulsa, Tulsa County, State of Oklahoma**

## **22631—Steve Wright**

### **Action Requested:**

Variance of the required minimum lot width in an AG District (Table 25-2) to permit a lot split. **LOCATION:** 11840 South Sheridan Road East **(CD 8)**

### **Presentation:**

**Steve Wright**, 4209 South Noble Avenue, Broken Arrow, OK; stated his client has about seven acres and there is a large two-story house on the far west back piece of the property. His client would like to split the tract. His client would like to sell the back piece of property and build a new one-story house on the front piece of property because of medical hardships.

Mr. Van De Wiele asked Mr. Wright how the lots to the north are accessed off Sheridan. Mr. Wright stated there is a joint road that all the neighbors maintain, like a mutual access easement, and it accesses all the houses.

Mr. Van De Wiele asked Mr. Wright if it went along his client's north property line. Mr. Wright answered affirmatively.

Mr. Wright stated that his client has spoke to all of her neighbors and they all have given their approval of the project.

Mr. Chapman stated that he received an e-mail at 1:25 P.M. in opposition, and he asked if the Board would like to have it read. Mr. Van De Wiele answered affirmatively and asked Mr. Chapman to also display an e-mail, that was received late, in opposition to the project due to stormwater issues. Mr. Van De Wiele stated that the Board often hears about issues relating to stormwater. The typical response is that stormwater issues are dealt with during permitting and platting and development, it is not part of this Board's decision making. The Board of Adjustment does not have jurisdiction over stormwater. Mr. Chapman read the e-mail sent at 1:25 P.M. that also objects to the proposed project because of stormwater issues.

Mr. Wright came forward and stated that the only thing he can think those neighbors are referring to is that there is a channel that cuts across the properties. All of the citizens think the City of Tulsa should have done something with the channel because the water is eroding the dirt. The channel is an open ten to twelve-foot trench except for a small area where his applicant has put 3-foot diameter pipes underground to take the water away at her property.

### **Interested Parties:**

There were no interested parties present.

### **Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **BACK**, the Board voted 3-0-0 (Back, Radney, Van De Wiele "aye"; no "nays"; no "abstentions"; Bond, Ross absent) to **APPROVE** the request for a Variance of the required minimum lot width in an AG District (Table 25-2) to permit a lot split, subject to conceptual plans 9.12 and 9.13 of the agenda packet. The Board has found the hardship to be the large size of the lot in proportion to the other development within the area. 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:

**N/2 NE SE SE & BEG 1322.16N & 659.85W SECR SE TH W495.49 S221.73 E494.84 N221.73 TO POB SEC 34 18 13 7.469ACS, City of Tulsa, Tulsa County, State of Oklahoma**

**22632—Michael Kneafsey**

**Action Requested:**

Special Exception to exceed the allowable driveway width within the street setback (Section 55.090-F.3); Variance to allow for an accessory building to exceed one story in height (Section 90.090-C.2). **LOCATION:** 1868 East 16<sup>th</sup> Place South (CD 4)

**Presentation:**

**Michael Kneafsey**, 1840 East 16<sup>th</sup> Place, Tulsa, OK; stated the subject property is three hundred yards from his house at 1868 East 16<sup>th</sup> Place. Mr. Kneafsey stated that he has gone through all the historic zoning and they have approved it. The issue at hand is the driveway which is a 12-foot driveway and only 43 feet of frontage. When he filed for the permit, he was told that was out of line. Mr. Kneafsey stated that at his end

of the street there is no on-street parking, so when he has visitors they have to park about where his existing house is located. Since he has a single car driveway he would like to pull out in front of the house, but he does not want concrete. He would like to have permeable pave stone, so if no one is parking on it permanently it looks like grass. The photographs in the Board's packet is his backyard; he installed it last year to experiment with it.

Mr. Van De Wiele asked Mr. Wilkerson if there was relief needed to do this technique. Mr. Wilkerson stated the way the paving definition is set up is that it is an all-weather surface. Typically, that is considered to be asphalt or concrete. This material is different than that, but he would make the statement that this is an all-weather surface and it is consistent with the intent of what that provision in the Code is.

Mr. Kneafsey stated the second issue in this request is to have a second floor on the garage. The historic preservation does not have any say over detached garages, but with historic preservation the requirement is that the house has a detached garage. Mr. Kneafsey stated that there are other second story garages in the area and is the norm in the neighborhood.

Mr. Van De Wiele asked Mr. Kneafsey if he had any intentions on making the second floor a second residence. Mr. Kneafsey stated that he is not going to have an AirBnB, but he has two family members, mother and mother-in-law, that may occupy the second floor in the future. Mr. Van De Wiele stated that situation would not be an issue.

Mr. Van De Wiele asked Mr. Kneafsey if the construction materials and the roofline of the garage would be compatible with the house. Mr. Kneafsey answered affirmatively and stated that he wants it to match and keep the intent of the street. His goal is to be a good neighbor and not offend anyone.

**Interested Parties:**

**Edward Lange**, 1865 East 16<sup>th</sup> Place, Tulsa, OK; stated he lives next door to Mr. Kneafsey. Mr. Lange stated he is not in support of this request. The garage is fine, but he has a problem with parking in the front yard. Mr. Lange read from a historic preservation document, referring to Section A. Mr. Lange stated he has lived in the neighborhood since 1991 and has never seen parking in the front yard on a paved surface.

Mr. Van De Wiele stated that is not something the Board has been asked to approve. If these plans have been approved by the HP committee that would be jurisdiction of that approval. The Board is not being asked to approve parking in the front yard or parking on grass, all the Board is being asked to approve is the size of the detached garage and the width of the driveway.

Mr. Lange asked when notice was given on the historical preservation issue. Mr. Van De Wiele stated that he could not give him an answer on that. If there was a

proceeding before the Historical Preservation Committee, he does not know; that is not this Board.

Mr. Lange stated that to him the issue is the historical preservation, so he is done. Mr. Van De Wiele encouraged Mr. Lange to get in contact with the Historical Preservation Committee.

**Rebuttal:**

**Michael Kneafsey** came forward and stated that he understands Mr. Lange's concerns. He thinks HP did look at all this and it should be in their minutes. Mr. Kneafsey stated that he does not think the HP gives notification.

**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 **Special Exception** to exceed the allowable driveway width within the street setback (Section 55.090-F.3); **Variance** to allow for an accessory building to exceed one story in height (Section 90.090-C.2), subject to conceptual plans 10.24 for the site plan and 10.25 for the architectural renderings. The Board has found the hardship for the Variance to be the Historic Preservation Commission requires detached garage structures, and the detached two-story garages are common within the neighborhood, and it will be in keeping with the character of the neighborhood. This approval is subject to the dwelling area within the structure would only be used by family or guests and is not to be used as rental property. 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:

**LT 17 BLK 1, BUNGALOW COURT, City of Tulsa, Tulsa County, State of Oklahoma**

**22633—Randy Hendrix**

**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:** 302 South Frankfort Avenue East **(CD 4)**

**Presentation:**

**Bud Scott**, Attorney at Law, 1120 NW 51<sup>st</sup> Street, Oklahoma City, OK; stated he represents Mr. Hendrix. Mr. Scott stated there has been an extensive search performed and provided as part of the exhibit that demonstrates there are no dispensaries within 1,000 feet in any direction.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **BACK**, the Board voted 3-0-0 (Back, Radney, Van De Wiele "aye"; no "nays"; no "abstentions"; Bond, Ross 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:

**LTS 1 THRU 12 & N10 VAC ALLEY ADJ ON S BLK 115, TULSA-ORIGINAL TOWN, City of Tulsa, Tulsa County, State of Oklahoma**

**22634—Gregory Helms**

**Action Requested:**

Special Exception to permit a freestanding sign to be located within the City of Tulsa street right-of-way/planned street right-of-way (Section 60.020-E).

**LOCATION:** 3509 South Peoria Avenue East **(CD 6)**



**Presentation:**

**William R. Grimm**, Attorney at Law, 110 West 7<sup>th</sup> Street, Suite 900, Tulsa, OK; stated that Mr. Helms had another engagement, so he is appearing on his behalf. This application is for a sign that is 6'-0" x 1'-6" x 6" to be placed in the right-of-way at the corner of 35<sup>th</sup> and Peoria. The sign will be part of the Center One Shopping Center, and it would not block any access along the sidewalk and would provide the ability to the public to see the tenants that are in the rear part of the center. Mr. Grimm stated that if the sign is approved, he would step into negotiations with the City of Tulsa to receive the removal agreement. Mr. Grimm stated the sign will be recessed back off Peoria and off 35<sup>th</sup> Street.

Ms. Radney asked Mr. Grimm how the sign would be lit at night. Mr. Grimm stated that it would be totally back lit.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

Mr. Wilkerson stated that there are about 30 people on the list regarding the license removal agreement, and INCOG is on that list at the Planning Department. Mr. Wilkerson stated that he would recommend a denial of the license because of the obstructions to the pedestrian way in the neighborhood. It is important for the applicant to know that if this request passes this Board there are going to be other objections that come up.

Mr. Swiney stated there is no way that there is a guarantee that the applicant will receive the license agreement. Mr. Swiney stated that he also helped draft the license agreement that the City uses, and there is a paragraph that states "the sign must obey all building codes, electrical codes, ADA requirements, zoning codes, setback requirements, traffic laws, etc.; all of those laws must be observed.

Mr. Van De Wiele stated that Mr. Wilkerson's concerns on behalf of planning speaks directly to the injurious or non-injurious nature to the neighborhood or a detriment to the public welfare. Mr. Van De Wiele asked Mr. Wilkerson if there is something more formal that the planning staff has to go through when the application comes before them, or is that something that needs to be discussed today?

Mr. Wilkerson stated that in the process, INCOG is one of many people and ultimately the City Council is responsible for allowing the structures in the right-of-way. Historically, the Council has taken very seriously objections that staff may have for placing structures in the right-of-way.

Mr. Van De Wiele asked Mr. Wilkerson to elaborate on his concerns. Mr. Wilkerson stated that the Comprehensive Plan is reviewed and the encouragement to provide a walkable community and to provide a safe walkable environment. Staff also looks at the street standards inside the City of Tulsa other than the land use plan and

Comprehensive Plan. Staff also looks at the Major Street and Highway Plan and what the general characteristics of this street should be. Staff looks at all those items to make their recommendations based on those requirements.

Ms. Radney stated this area gets a lot of foot traffic and it is a fairly intense corner for automobile traffic, so the idea of placing something in the sidewalk space that is going to change the flow of pedestrian traffic around that corner is a little alarming, especially given that the seating that is also going to obscure some of the oncoming traffic ability to see around the corner. Adding another obstacle that a pedestrian is going to maneuver around is a bridge too far for her. Ms. Radney stated that she would feel more comfortable if the sign were actually protruding or extending from the building rather than actually sitting on the ground.

Mr. Van De Wiele stated there are two or three restaurants in the immediate area that seem to allow cars to stop to drop off passengers. If this would encourage someone to step out of the sidewalk space, and it is maybe one of the more heavily used crosswalks in Brookside.

**Board Action:**

On **MOTION** of **BACK**, the Board voted 3-0-0 (Back, Radney, Van De Wiele "aye"; no "nays"; no "abstentions"; Bond, Ross absent) to **DENY** the request for a **Special Exception** to permit a freestanding sign to be located within the City of Tulsa street right-of-way/planned street right-of-way (Section 60.020-E); for the following property:

**LTS 3 - 6 & N 2' OF LT 2 BLK 3, OLIVERS ADDN, City of Tulsa, Tulsa County, State of Oklahoma**

**22635 – KKT Architects**

**Action Requested:**

Variance of the F1 screening fence or wall requirement along the east property line (Section 65.060-C.2). **LOCATION:** SW/c of East 31<sup>st</sup> Street South & South 120<sup>th</sup> Place East **(CD 6)**

**Presentation:**

**Nicole Watts**, KKT Architects, 2200 South Utica Place, Tulsa, OK; stated this request is for Community Health Connection which is located on Union's Ochoa Elementary School property. Last year the subject five-acre northeast corner of the property was rezoned from AG to OL to allow the office building. That rezoning triggered a screening requirement on the east side of the property. The subdivision is on the far east and there is a small strip for a road, 120<sup>th</sup> East Place, that is about 40 feet and it is not a public road, it is a private road that goes back to an assisted living facility and then the subject property. There is an existing six-foot wooden privacy fence along 120<sup>th</sup> East Place and the existing subdivision. When this started going through the building permit process it was required to put a six-foot wooden screening privacy fence on the subject

property's east property line, which is the west side of 120<sup>th</sup> East Place. The fence was erected in order to receive the building permit, but after the fact, Union Public Schools, Community Health Connection and the owner of the assisted living facility have all asked for a waiver of that requirement. They all feel like it creates a corridor effect and are worried about safety and other issues. Community Health Connection still plans on providing all the required trees and shrubs required by the Zoning Code, but they would like to remove the wooden privacy fence.

Mr. Van De Wiele asked Ms. Watts what was getting built on that portion of the lot that is under discussion. Ms. Watts stated it is a medical office building for Community Health Connection with parking on the west side of the building facing the school; the east side of the building will be the back.

Mr. Van De Wiele asked Ms. Watts how the building will be accessed. Ms. Watts stated that the building will be accessed off Union.

Mr. Van De Wiele asked to state her hardship for this case. Ms. Watts stated it is the fact that there is an existing fence and the houses rear yards back up to it.

Ms. Radney asked Ms. Watts who is responsible for maintaining the six-foot fence. Ms. Watts stated that she is not certain, but she believes the fence was erected with the development of the subdivision.

Mr. Van De Wiele asked Ms. Watts if this was the principle thoroughfare used to get to their houses. Ms. Watts stated that it is not, the homeowners use 121<sup>st</sup> East Avenue.

Mr. Van De Wiele asked Ms. Watts if there were still vegetation requirements. Ms. Watts answered affirmatively.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **BACK**, the Board voted 3-0-0 (Back, Radney, Van De Wiele "aye"; no "nays"; no "abstentions"; Bond, Ross absent) to **APPROVE** the request for a Variance of the F1 screening fence or wall requirement along the east property line (Section 65.060-C.2), subject to conceptual plan 13.26 of the agenda packet. The Board finds the hardship to be the requirement of the solid wood fence would make a solid wooden tunnel on either side of 120<sup>th</sup> East Place and create safety issues. The Board is not relieving the natural vegetation screening requirement. 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:

**COMMENCING AT THE NORTHERNMOST NORTHWEST CORNER OF GARNETT VILLAGE, ALSO BEING THE POINT OF BEGINNING; THENCE SOUTH 01° 28' 29" EAST FOR A DISTANCE OF 633.85 FEET ALONG THE WEST LINE OF GARNETT VILLAGE; THENCE, SOUTH 88° 33' 54" WEST FOR A DISTANCE OF 337.00 FEET; THENCE, NORTH 01° 28' 29" WEST FOR A DISTANCE OF 635.66 FEET; THENCE, NORTH 88° 52' 21" EAST FOR A DISTANCE OF 337.00 FEET TO THE POINT OF BEGINNING; SAID TRACT OF LAND CONTAINING 4.91 ACRES, MORE OR LESS, City of Tulsa, Tulsa County, State of Oklahoma**

### **22636—KKT Architects**

#### **Action Requested:**

Variance of the required street setback from East Latimer Place (Section 15.030-A); Variance to allow an existing structure to be located within the City of Tulsa street right-of-way/planned street right-of-way (Section 90.090-A); Variance of the required lot width for two proposed lots (Lot 2 & Lot 5) (Section 15.030-A).

**LOCATION: 1037 North Owasso Avenue East (CD 1)**

#### **Presentation:**

**Nicole Watts**, KKT Architects, 2200 South Utica Place, Tulsa, OK; stated the subject property is located at corner of Owasso and Latimer Place. There are five existing structures that were constructed in the 1940s and they were built not completely on their own lot lines; some of them straddle existing lot lines. The property is platted but the structures were not completely built correctly. A developer has purchased the subject property and he wants to repurpose the structures for uses allowed in IM. Ms. Watts stated that they have produced lot splits and lot combinations to be able to get all the buildings on their own separate lots for financing purposes, for leasing, etc.; the owner would like to say that each lot contains one building. The clean up triggers the first

Variance for one of the reductions in a lot width, Lot 5, the southern lot. Trying to get the lot lines to comply with the existing structures created some of the lots to be less than the Zoning Code allows.

Mr. Van De Wiele asked Ms. Watts if the same issue was on Latimer Place. Ms. Watts answered affirmatively and stated that it is an existing structure, so based on the proposed right-of-way it does not meet the required setbacks.

**Interested Parties:**

**Sweet Recess**, 1051 North Norfolk Avenue, Tulsa, OK; stated she is with the Crutchfield Neighborhood Association. Ms. Recess stated that she lives right behind the subject property and does not understand what the applicant wants to do, and that is why she is in attendance today.

Mr. Van De Wiele stated the way the property is legally drawn out at this point it appears to be two lots. One large lot, which is the northern lot and one smaller lot. One those two lots there were five buildings built on the property years and years ago. The owner of the property wants to treat the buildings as individual buildings, each contained on their own lot. Today's applicant would like to draw the property into five individual lots, each of which hold one of the existing buildings so they can be treated individually.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **BACK**, the Board voted 3-0-0 (Back, Radney, Van De Wiele "aye"; no "nays"; no "abstentions"; Bond, Ross absent) to **APPROVE** the request for a Variance of the required street setback from East Latimer Place (Section 15.030-A); Variance to allow an existing structure to be located within the City of Tulsa street right-of-way/planned street right-of-way (Section 90.090-A); Variance of the required lot width for two proposed lots (Lot 2 & Lot 5) (Section 15.030-A), subject to conceptual plan 14.13 of the agenda packet. The Board finds the hardship to be the original structures were built over the property lines, probably before the lots were combined but the Board does not have that information. 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 1- 5 BLK 1, BULLETTE SECOND ADDN, City of Tulsa, Tulsa County, State of Oklahoma**

\* \* \* \* \*

**OTHER BUSINESS**

None.

\* \* \* \* \*

**NEW BUSINESS**

None.

\* \* \* \* \*

**BOARD MEMBER COMMENTS**

Mr. Van De Wiele stated that on the spacing verification for the marijuana medical dispensaries, he thinks there will be a lot of them coming in the future. The motions always say, “subject to them being void should another establishment be put up first”, maybe that tends to encourage this attitude of “I was here first, too bad”. He does not know what the right answer is or if there is something that could be clarified in the spacing language, but he thinks there are going to be problems. The spacing verification that was approved today, if the applicant just sits on his approval for three months and somebody else goes in next door, they can open but then the first person says “I was here” that will create the need for a Variance.

Mr. Swiney stated that if the first applicant has been approved, what the Board has stated in their approval is that it will be void if someone else goes in and sets up shop before you, the first applicant will then lose, and the second applicant will have their dispensary.

Mr. Van De Wiele stated the first applicant is not going to know their motion has evaporated by being void because somebody was faster to market. Then the Board will have a request for a Variance and the Board will be very hard pressed to say no.

Mr. Van De Wiele stated he does not know what the answer is, but he can see this becoming an issue in the future.

\*\*\*\*\*

There being no further business, the meeting adjourned at 4:04 p.m.

Date approved: June 13, 2019

Barbara J. Ross for  
Chair Stuart VanDeWiele