

BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1229
Tuesday, May 28, 2019, 1:00 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 Radney	Bond	Wilkerson Ulmer Sparger K. Davis	Swiney, Legal

The notice and agenda of said meeting were posted in the City Clerk’s office, City Hall, on May 23, 2019, at 2:32 p.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
None.

UNFINISHED BUSINESS
None.

Mr. Van De Wiele explained to the applicants and interested parties that there were only four board members present today; Mr. Bond has been called up to active military duty. Most motions the Board makes it will require an affirmative vote of three of the remaining four members. When there is less than a full Board, the Board will entertain a request to continue agenda items to a later meeting date, at which all five members of the Board may be present. Mr. Van De Wiele asked if there were any applicants 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.

Mr. Van De Wiele stated that there is a scheduling conflict with one of the applicants today, who has another City meeting that will start shortly so the Board will hear that item out of order. Mr. Van De Wiele started the meeting with Item #7.

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NEW APPLICATIONS

22643—Stephen Schuller

Action Requested:

Variance to increase the allowed display surface area for a sign abutting a minor street (Section 60.080-C); Variance to permit a sign to exceed the maximum permitted height (Section 60.080-D). **LOCATION:** 1617 West 51st Street South (CD 2)

Presentation:

Stephen Schuller, 100 West 5th Street, Suite 1100, Tulsa, OK; stated this property is located at the northeast corner of 51st Street and Union Avenue. Union Avenue there is a corridor street, mostly shopping commercial uses, especially at the 51st and Union corridor. It is a multi-mode corridor urban arterial but it becomes a secondary arterial as it goes south from 51st Street across Skelly Drive overpass into the area to the south, and 51st Street is a residential collector street to the west of Union Avenue, to the east of Union Avenue it serves only commercial businesses as does Tacoma Avenue. The only logical place to erect the store sign is at the corner of Union Avenue and 51st Street where it presently sits. It is closer than the minimum setback for that corner and it is the only way to see it from the adjacent I-44 expressway. This Board approved Variances about 7 ½ years ago, now Oklahoma Department of Transportation (ODOT) is coming through to improve Skelly Drive and the surrounding intersections. Union Avenue will become five lane and 51st Street will also be widened with some turning lanes so the location of the existing QuikTrip sign that is on the corner is going to be acquired by ODOT for street right-of-way. ODOT is also acquiring utility easements along both the Union Avenue frontage and the 51st Street frontage. The only place left for the store sign is at the southeast corner of the property, setting it back the requisite distance from 51st Street to be outside of the utility easement that is being acquired by ODOT. Now the requirements for the sign is a little different according to Mr. Kolibas with the City. QuikTrip has to have relief from the maximum display surface area for signs because it abuts what the City characterizes as a minor street, 51st Street, which has a smaller sign size limitation thus the Variance for the maximum allowed display surface area of the sign in order to replace the store sign. Mr. Schuller stated he is also asking for the same Variance as requested before for the 60-foot height so the sign can be seen from the adjacent I-44 freeway. Mr. Schuller stated the hardship is the physical

surroundings, shape, topographical conditions of the property particularly the peculiar location along the street where ODOT is acquiring both fee title on the corner and a fairly deep easement along the entire frontage that creates the unnecessary hardship which results in the requests for the Variances.

Mr. Van De Wiele asked Mr. Schuller about the Exhibit 7.17 showing 50 feet in height. Mr. Schuller deferred to Mr. Daniel.

Interested Parties:

Daniel Chambers, QuikTrip, 4705 South 129th East Avenue, Tulsa, OK; stated that originally the request was for 60 feet and the sign was actually built at 50 feet tall, so that is the discrepancy.

Comments and Questions:

None.

Board Action:

On **MOTION** of **BACK**, the Board voted 4-0-0 (Back, Radney, Ross, Van De Wiele "aye"; no "nays"; no "abstentions"; Bond absent) to **APPROVE** the request for a Variance to increase the allowed display surface area for a sign abutting a minor street (Section 60.080-C) from 73 square feet to 162.28 square feet; Variance to permit a sign to exceed the maximum permitted height (Section 60.080-D) from 20 feet to 60 feet as it was advertised, subject to conceptual plans 7.17 and 7.18 of the agenda packet, and the conceptual plan submitted today. The Board finds the hardship to be that ODOT is acquiring additional highway right-of-way and utility easements, and the sign is to be relocated to another location that is abutting a minor residential collector street. The sign is to be 50 feet high as shown on the exhibit submitted today. 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:

A TRACT OF LAND THAT IS PART OF LOTS 3 AND 4, BLOCK 4, SUBURBAN HIGHLANDS, A SUBDIVISION IN THE CITY OF TULSA, TULSA COUNTY, OKLAHOMA, ACCORDING TO THE RECORDED PLAT THEREOF, SAID TRACT OF LAND BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 26, TOWNSHIP 19 NORTH, RANGE 12 EAST, TULSA COUNTY, OKLAHOMA; THENCE N 89°05'45" E ALONG THE SOUTHERLY LINE OF THE SW/4 OF SAID SECTION 26 FOR 50.00 FEET; THENCE N 00°54'47" W PARALLEL WITH THE WESTERLY LINE OF SAID SW/4 FOR 60.00 FEET TO THE POINT OF BEGINNING OF SAID TRACT OF LAND; THENCE CONTINUING N 00°54'47" W PARALLEL WITH SAID WESTERLY LINE FOR 95.70 FEET; THENCE N 89°03'51" E FOR 104.32 FEET; THENCE N 01°08'13" W FOR 138.25 FEET; THENCE N 89°05'45" E FOR 261.23 FEET; THENCE S 00°54'47" E FOR 239.00 FEET; THENCE S 44°05'07" W FOR 35.35 FEET; THENCE S 89°05'45" W PARALLEL WITH AND 30.00 FEET NORTHERLY OF THE SOUTHERLY LINE OF SAID SW/4 FOR 310.01 FEET TO A POINT OF CURVE; THENCE NORTHWESTERLY ALONG A CURVE TO THE RIGHT, WITH A CENTRAL ANGLE OF 89°59'28", A RADIUS OF 30.00 FEET, A CHORD LENGTH OF 42.42 FEET, A CHORD BEARING OF N 45°54'31" W, FOR AN ARC LENGTH OF 47.12 FEET TO THE POINT OF BEGINNING OF SAID TRACT OF LAND, CONTAINING 81,467.27 SQUARE FEET OR 1.87 ACRES, City of Tulsa, Tulsa County, State of Oklahoma

22637—Dominique Henderson

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: 859 South Knoxville Avenue East (overall parcel) – **TENANT**

SPACE: 3609 East 11th Street South (CD 4)

Presentation:

Dominique Henderson, 3609 East 11th Street, Tulsa, OK; no formal presentation was made by the applicant.

Mr. Van De Wiele stated the Board has received the applicant's spacing verification as displayed on pages 1.9 and 1.10 of the agenda packet. Mr. Van De Wiele asked Ms. Henderson if she had not found any other dispensaries in the 1,000-foot radius. Ms. Henderson answered affirmatively.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **BACK**, the Board voted 4-0-0 (Back, Radney, Ross, Van De Wiele "aye"; no "nays"; no "abstentions"; Bond 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 15 BLK 5, BRADEN HGTS ADDN, City of Tulsa, Tulsa County, State of Oklahoma

22638—Crown Neon Signs – Gary Haynes

Action Requested:

Variance to permit a digital sign (dynamic display) to be located within 200 feet of an RM-2 and RS-2 zoning district (Section 60.100-F). **LOCATION:** 4532 East 51st Street South (overall parcel) – **TENANT SPACE: 4512 East 51st Street South (CD 9)**

Presentation:

Gary Haynes, Crown Neon Signs, 5676 South 107th East Avenue, Tulsa, OK; stated that the existing sign is to be improved and the applicant would like to have an LED display for the sign. The LED display would be within 200 feet of a residential area thus the Variance request for that. Mr. Haynes stated that he has received a couple of e-mails regarding the LED lights. One lady said the light shines in her window at night and Mr. Haynes stated that he thinks it is the existing pole light that is located farther back in the storage area. Mr. Haynes stated that the hardship is the tenants in the storage area are so far back from the sign location, and they would like to have more exposure for the storage facility.

Mr. Van De Wiele asked Mr. Haynes where he thinks the pole light in question is located. Mr. Haynes stated that he thinks it is closer to the storage facility and that it is a parking lot light. Mr. Haynes stated that with all the trees the sign cannot be seen from her property.

Mr. Haynes stated the proposed sign will be about 2 ½ feet shorter than what exists; the sign will have a couple of new tenants added to the listing, adding the LED display and adding a rock base to the sign to make it look nicer than what exists. The sign will be eight feet wide and the LED lights will be inside each tenant's sign space and the sign will be about 2 ½ feet shorter in height.

Mr. Van De Wiele asked Mr. Haynes what the hours of operation would be for the sign. Mr. Haynes stated that it would go off at 9:00 P.M.

Interested Parties:

There were no interested parties present.

Comments and Questions:

Ms. Radney stated that she would like noted in the record that the Board has considered the interested parties e-mail comments, and she is sensitive to what they are saying.

Board Action:

On **MOTION** of **BACK**, the Board voted 4-0-0 (Back, Radney, Ross, Van De Wiele "aye"; no "nays"; no "abstentions"; Bond absent) to **APPROVE** the request for a **Variance** to permit a digital sign (dynamic display) to be located within 200 feet of an RM-2 and RS-2 zoning district (Section 60.100-F), subject to conceptual plans 2.12 and 2.13 of the agenda packet. The Board has found the hardship to be the long narrow strip of commercial and office zoning that abuts residential uses. All other small flag type signs and other smaller signs that are shown on Exhibit 2.10 must be removed, they are not legally permitted and are not allowed to be re-installed. 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:

**N828 E/2 W/2 W/2 NE NE LESS N50 LESS E25 S19 THEREOF SEC 33 19 13
2.94AC, City of Tulsa, Tulsa County, State of Oklahoma**

22639—Jose Soriano

Action Requested:

Special Exception to permit a carport in the street setback and street yard to exceed the allowable height requirements, to exceed 20 feet in length, and to project more than 20 feet into the street setback (Section 90.090-C.1).

LOCATION: 4007 East Ute Street North **(CD 3)**

Presentation:

Jose Soriano, 4007 East Ute Street, Tulsa, OK; stated he will have **Josephina Jimenez** as his interpreter. There is an existing carport and pictures were displayed on the overhead screen of the carport; additional pictures of other carports in the neighborhood.

Mr. Van De Wiele asked about the black and red pickup being under another carport in one of the pictures. The interpreter stated it is a structure used for shade. Mr. Van De Wiele asked if the applicant was driving across the yard to get to that structure. The interpreter stated that cars are not parked there all of the time, but the red pickup in the picture was there being loaded with equipment. Mr. Van De Wiele asked if the applicant has to drive across the yard to reach that structure. The interpreter answered affirmatively. Mr. Van De Wiele stated that any land that is driven across or parked on has to be concrete or asphalt. The applicant had several pictures placed on the overhead projector showing various carports in the neighborhood.

Interested Parties:

There were no interested parties present.

Comments and Questions:

Ms. Back stated that normally she is not a fan of the steel carports in a residential neighborhood, but it appears that there are a lot of other similar carports existing, permitted or not.

Ms. Ross stated she does not have a problem with the carport itself, but she has a problem with what appears to be another carport making two carports on one residential lot. She does not like the fact that the applicant is driving through the yard to access the second structure. She does not have a problem with the request for the one carport, but the other structure would have to be removed. Also, there is a picture showing a two-car carport with two cars parked under the structure one of the cars is parked on the grass.

Mr. Van De Wiele asked the applicant if the plan is to widen the existing driveway. The interpreter answered affirmatively; Mr. Soriano stopped working on the area until he received approval for the carport.

Board Action:

On **MOTION** of **BACK**, the Board voted 4-0-0 (Back, Radney, Ross, Van De Wiele "aye"; no "nays"; no "abstentions"; Bond absent) to **APPROVE** the request for a Special Exception to permit a carport in the street setback and street yard to exceed the allowable height requirements, to exceed 20 feet in length, and to project more than 20 feet into the street setback (Section 90.090-C.1), subject to conceptual plan 3.7 of the agenda packet. There is to be no driving or parking on anything but all-weather surface material. All-weather surface material will be installed under the proposed carport area, as shown on page 3.7 of the agenda packet. The existing carport on the side of the house may not be used for parking or driving unless permitted by the City of Tulsa and an all-weather surface is installed, inspected and approved. The Board finds that the requested Special Exception will be in harmony with the spirit and intent of the Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; for the following property:

LT 8 BLK 21, LOUISVILLE HGTS ADDN B9-30, City of Tulsa, Tulsa County, State of Oklahoma

22640—Rosemary Farms, LLC

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: 4111 South 70th Avenue East (CD 5)

Presentation:

Kayvon Olomi, 4111 South 70th East Avenue, Tulsa, OK; no formal presentation was made by the applicant.

Mr. Van De Wiele stated the Board has the applicant's spacing exhibit on page 4.6 in the agenda packet. Mr. Van De Wiele asked Mr. Olomi if he had investigated the 1,000-foot radius and not found any other dispensaries within that radius. Mr. Olomi answered affirmatively.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **BACK**, the Board voted 4-0-0 (Back, Radney, Ross, Van De Wiele "aye"; no "nays"; no "abstentions"; Bond 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:

W276.85 OF LTS 19 & 20 W276.85 OF S32 OF LT 21 BLK 6 .98 AC, KATY FREEWAY INDUSTRIAL PARK ADDN, City of Tulsa, Tulsa County, State of Oklahoma

22641—Tony Varano

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: 9401 East 31st Street South (overall parcel) – **TENANT SPACE:**
9419 East 31st Street South (CD 5)

Presentation:

Tony Varano, 1675 North Lynn Lane Road, Catoosa, OK; no formal presentation was made by the applicant.

Mr. Van De Wiele stated the Board is in receipt of the spacing exhibit on pages 5.6 and 5.7 in the agenda packet. Mr. Van De Wiele asked Mr. Varano if he was aware of any other dispensaries in the 1,000-foot spacing. Mr. Varano stated that he was not.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **RADNEY**, the Board voted 4-0-0 (Back, Radney, Ross, Van De Wiele "aye"; no "nays"; no "abstentions"; Bond 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:

LOT 1 BLK 2, LONGVIEW CENTER, City of Tulsa, Tulsa County, State of Oklahoma

22642—TEP – Tim Terral

Action Requested:

Variance to reduce the minimum lot-width requirement; Variance of the street setback requirement (Table 5-3). **LOCATION:** 4444 South Gary Avenue East (CD 9)

Presentation:

Tim Terral, Tulsa Engineering & Planning Associates, 9820 East 41st Street, Suite 102, Tulsa, OK; stated this request is basically a redo to a Board action that was approved in August, 2014. The only thing that is not exactly the same is the front yard setback request. The original application requested 25 feet and 30 feet was approved, and today the request is for the 25-foot front yard setback. The only reason he is here today is because the original Variances that were approved have expired; he found that out when he went to the City for a lot line adjustment.

Mr. Van De Wiele asked Mr. Terral to explain to the Board how this has changed. Mr. Terral stated that it really hasn't changed; what has changed is the front setback on both lots were approved at 30 feet in the original application and this application requests 25 feet.

Mr. Van De Wiele asked Mr. Terral about the lot width. Mr. Terral stated the lot width was requested at 85 feet; Lot 1 is 88 feet and Lot 2 is 105 feet.

Mr. Van De Wiele asked Mr. Terral to explain how the 25-foot building line will match up with the houses to the north and south and the houses across the street. Mr. Terral stated there are several lots in the area that are 25-foot setback and there are some that are 30 feet as well.

Interested Parties:

Shanna Marlow, 4424 South Gary Avenue, Tulsa, OK; stated she lives directly to the north of the subject property. Ms. Marlow stated that several of the neighbors have presented e-mail in opposition to this request. She understands there will be development on the subject property, but the neighbors would like it to be congruent with everything else in the neighborhood. The residents feel that putting any kind of structure too close to the street, because of the curvature of Gary Avenue it makes houses appear even closer to the street, and it would be a very short distance for a car to back out of that becoming a hazard to pedestrians. Other newly built homes in the neighborhood have been in line with the setback, so the neighbors feel there is no hardship. The subject lot is over 370 feet deep and most of the houses in the neighborhood are not over 9,000 square feet. There is plenty of opportunity to build a substantially sized house on the subject property without it being that close to the street.

Mr. Van De Wiele asked Ms. Ulmer if the prior relief did these same two things. Ms. Ulmer answered affirmatively; except for the front street setback they requested in 2014 a 25-foot setback and the Board approved 30 feet.

Mr. Van De Wiele asked Ms. Marlow if she knew how close her house sits to the building line. Ms. Marlow stated that is probably more than 35 feet because her house sits back quite a way. Ms. Marlow stated there is new construction across the street and that house is well within that setback also.

Mr. Van De Wiele asked Ms. Marlow if she had as much an issue with the subject property becoming two lots as opposed to how close the houses are built to the street. Ms. Marlow stated that it will be very tight to have two houses on the subject two lots with any sort of room in between them. Moving the houses closer to the street is just an added issue of trying to put two houses in the subject space; the character of the neighborhood is already established, and the houses are just not that close together.

Rebuttal:

Tim Terral came forward and stated that originally there was a request for 25 feet so that is what he was requested to ask for again. Mr. Terral stated that his client could live with 30 feet, but there are definitely houses on the street that have 30-foot and 25-foot setbacks. Mr. Terral stated that in regard to the bulk and area requirements the subject property, the northern lot, should be fine in terms of the separation of houses.

Comments and Questions:

Ms. Ross stated she is not as worried about the lot width because the houses to the south and across the street the houses are close together, and she sees others that are not as close together. There is still the flood plain issue that restricts building. In regard to the setback she would take issue with it if the setback were less than 25 feet.

Ms. Radney stated that with the flood plain issues the five feet will make a big difference to a homeowner in terms of what they would be able to do with the back yard. Ms. Radney stated she does not have a problem with the 25-foot setback, but she also would not oppose the 30-foot setback.

Mr. Van De Wiele stated that there is a large portion of this huge lot that is unbuildable because of the flood plain and the storm sewer easements. Mr. Van De Wiele stated that he would re-approve the same thing that was approved and has expired for a lack of use, but he does know if he would go to 25 feet. Mr. Van De Wiele stated that he would approve the width for the lot split purpose, and he would re-approve a 30-foot setback.

Board Action:

On **MOTION** of **BACK**, the Board voted 4-0-0 (Back, Radney, Ross, Van De Wiele "aye"; no "nays"; no "abstentions"; Bond absent) to **APPROVE** the request for a Variance to reduce the minimum lot-width requirement for Lot 1; Variance of the street setback requirement (Table 5-3), subject to conceptual plan 6.23 of the agenda packet. The Board has found the hardship to be the existing 100-year flood plain taking up approximately 2/3 of the lot, also, the 15" sanitary sewer easement that runs north/south and the sanitary sewer easement that runs east/west, and the large storm sewer that

runs across the back end of the property that is part of the City of Tulsa's storm sewer system. The Variance is being approved at 30-foot building line not 25-foot building line. 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:

PT LTS 1 & 2 BEG. 104. 65 E. OF SWC LT 2 N 185 17 E 149 PARL TO N. L. LT 1 S 203.77 WLY 149 TO BG LESS S 20 ST BLK 5; PT LTS 2 BG SWC TH N172 1 E104 65 PARL TO N. L. LT 1 S185 17 WLY TO BEG PLUS R OF W ON S TO GART AV BLK 5; PRT LTS 1 & 2 BEG SECR LT 2 TH NW101.95 N201.67 E152 SW223.66 POB LESS S30 THEREOF BLK 5, VILLA GROVE PARK, City of Tulsa, Tulsa County, State of Oklahoma

22644—M. Scott Phlenz

Action Requested:

Variance to reduce the rear setback requirement in an RS-1 District (Section 5.030-A). **LOCATION:** 4636 South Wheeling Avenue East **(CD 9)**

Presentation:

Scott Phlenz, Architect, 3402 South Peoria Avenue, Tulsa, OK; stated the homeowner is seeking to come into the rear setback line by six feet to allow for the addition of livable space and a detached garage. There are very large mature trees that keep the homeowner from being able to position the garage to engage into the existing house. The rear property line is 25 feet and what is being proposed is six feet into the building line. There is no ability to come to the front of the house for the addition because of where the front building line is located.

Ms. Ross asked Mr. Phlenz how many square feet the house is. Mr. Phlenz stated that it is approximately 3,000 square feet. Ms. Ross asked how many people reside in the house. Mr. Phlenz stated that currently there are two people living in the house.

Mr. Van De Wiele asked Mr. Phlenz if his client has visited with the neighbors, specifically those that are in the block. Mr. Phlenz stated that he does not know if they have visited with the neighbors specifically, but there has been contact with the neighbor that is directly behind the house on the west side, and he did not want any change to the property line.

Ms. Ross asked what was going to happen to the current garage. Mr. Phlenz stated that it will remain as a garage.

Ms. Radney asked Mr. Phlenz how the new garage would be accessed. Mr. Phlenz stated the drive comes in from Wheeling and there would be a front facing garage door so you could pull straight in.

Interested Parties:

There were no interested parties present.

Comments and Questions:

Ms. Ross stated she is skeptical about this project. This is a 3,000 square foot house with two people in it that will have a growing family. If those were children, they would not need the additional garage space, so she thinks it will be adults, like a parent. Ms. Ross thinks she needs additional information.

Mr. Van De Wiele stated these are big houses on big lots, and he guesses there are lots of structures that appear to be additions particularly in the rear. Most of these houses look as if they have had some sort of addition toward the rear. Mr. Van De Wiele stated, that per the Code, it is a minimal area. The size of these lots, the building pattern in the area, the Board has certainly referenced mature trees before so he could support this request.

Ms. Radney stated that it appears to her that penetration into the setback is not substantial, and it looks like the addition is not going to interfere with the way the house presents to the street. She thinks it will be respectful of the nature of this ranch style neighborhood.

Board Action:

On **MOTION** of **BACK**, the Board voted 3-0-1 (Back, Radney, Van De Wiele "aye"; no "nays"; Ross "abstaining"; Bond absent) to **APPROVE** the request for a Variance to reduce the rear setback requirement in an RS-1 District (Section 5.030-A), subject to conceptual plan 8.17 of the agenda packet. The Board has found the hardship to be the size of the lot and the development pattern in the area and trying to develop around mature trees that are the character of the neighborhood. The finishes of the expanded structure and the new garage structure finishes are to be in keeping with the main

house structure finishes and the roof pitch design. The Board finds that the following facts, favorable to the property owner, have been established:

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

LT 2 BLK 2, BOLEWOOD ESTATES, City of Tulsa, Tulsa County, State of Oklahoma

22645—M. Scott Phlenz

Action Requested:

Variance to reduce the street setback requirement in an RS-2 District (Section 5.030-A); Variance to reduce the side setback requirement in an RS-2 District (Section 5.030-A). **LOCATION:** 2212 South Terwilliger Boulevard East **(CD 4)**

Presentation:

Scott Phlenz, Architect, 3402 South Peoria Avenue, Tulsa, OK; stated the request is to install a covered porch on an existing porch at the front of the house. The Variance request is to be able to install a cover onto the front. The second portion of the Variance relates to an existing attached carport that is on the north side of the property. The house caught fire and is being rebuilt, and there was damage to the carport. In this process there are existing window wells that sit between the gap of the carport that are having water issues. What he proposes is to take the existing carport structure and extend it forward ten feet, not extending beyond the existing front of the house, and that would tie into the proposed wrap around porch which would help solve the water issues. Mr. Phlenz stated that the carport structure has been in existence for over 30 years.

Mr. Van De Wiele stated that he hesitates to get into water issues because that is a building permit issue; where will the water be taken? Mr. Phlenz stated the intention is to pipeline it to the street.

Ms. Radney asked Mr. Phlenz what the roofline of the extension for the carport would look like. Mr. Phlenz stated the roofline would be exactly what exists but extended farther to the east as shown on page 9.25.

Ms. Radney asked Mr. Phlenz if there was a historical overlay in the neighborhood. Mr. Phlenz stated that he is not aware of one.

Interested Parties:

Doug Tayrien, 2208 South Terwilliger Boulevard, Tulsa, OK; stated he lives directly to the north of the subject property; he has lived in his house since 2000. Mr. Tayrien stated his main concern is the five-foot easement and the applicant is trying to build out to the edge of the setback. Mr. Tayrien stated that the applicant claims the carport has been in existence for decades, but it has only been there five or six years. There was nothing there before that time. Mr. Tayrien stated that he went to the Permit Office and found there was no permit for the structure. He went to INCOG and found that there was no Variance to allow the structure to sit over the five-foot easement. Based on the Tulsa Municipal Codes this structure should not be there at all. Mr. Tayrien stated he is an architect and he understands the needs for a Variance, and when it is applicable to do so. In this case there is no physical difficulty. There is no hardship. This is really a matter of want and convenience over a matter of necessity. There was a detached garage behind the house at one point in time and it was taken down. The reality of this is that there are other options of where a covered structure could be placed. The south side of the property has plenty of room. The application shows a flat roof and the design load for that is not going to work with the structure that is there because it is not strong enough to handle that. Based on the current design, if the cornice is followed around from the front door to the side, the structure would be 3 ½ feet taller than what the current lower edge of the eave is. Additionally, the current structure is just sitting on the driveway; there is no foundation underneath it so it will need to be modified to carry the load. Mr. Tayrien stated that the drainage into the light well was created by the structure because there are no gutters on it, therefore, the water is dumping into the light well. Additionally, the structure is dumping water onto his property and he has had problems with water getting into the sunroom. When the structure is complete it will be 3 ½ feet higher than the current structure and it will be about six feet from the edge of his house, and the structure blocks out the light to the sunroom. Mr. Tayrien believes that his property value will be affected by having a structure that close, and it will definitely affect the light into his sunroom. Additionally, it was mentioned that the subject house had a fire and now the structure will be moved closer to his house so the fire separation between houses is less. The rainwater comes off the structure into his sunroom, any additional structure added on to this will compound the problem, and it is not adequately addressed as to how the water will be shed.

Ms. Ross asked Mr. Tayrien if he knew how long the current owner's have owned the house. Mr. Tayrien stated that he is not sure, but he knows they were there in 2000.

Ms. Radney asked Mr. Tayrien if he was opposed to any sort of a covered enclosure. Mr. Tayrien stated if the structure is not within the five-foot easement the applicant can do what he wants.

Mr. Van De Wiele asked staff about the five-foot setback allowing accessory buildings or detached buildings. Mr. Wilkerson stated that if it is an accessory building it can be within three feet of the lot line, but the building is not an accessory building when it is attached. There is a soffit on the structure that can project into the five-foot setback by a maximum of two feet.

Ms. Back left the meeting at 2:52 P.M.

Melinda Tayrien, 2208 Terwilleger Boulevard, Tulsa, OK; stated she purchased her property with the expectation that the Code would be honored. The Codes are in place for a reason, and fire safety is primarily on her mind because it happened recently; she picked up charred bits from her backyard for months. The Code is in place to protect people and individuals and their assets, their house.

Ms. Back re-entered the meeting at 2:54 P.M.

Ms. Tayrien stated the neighbors have an awesome house, but she knows the structure was built in the last several years. A contractor would have to come onto her property to be able to build such a structure, and how will the subject property owner be able to maintain the structure? Ms. Tayrien stated there is a water issue that has started after the structure was erected. She purchased her house knowing there was a certain amount of space between her and the neighbor, and the subject property owner bought his house knowing that also. Ms. Tayrien stated the subject property owner has turned their backyard into a resort with lots of concrete; the former garage was turned into a cabana with sleeping quarters. It is fine that they want that type of backyard, but they are going over the setbacks and coming into her area; she expected the Codes would be honored for her financial benefit.

Ms. Radney asked Ms. Tayrien if she would be opposed to having some sort of covered structure if it were constructed in such a way that the water runoff was abated? Ms. Tayrien stated that anything that honors the current Code, like the five-foot setback, she would not care.

Mr. Van De Wiele stated the setback would be three feet, and he asked Mr. Wilkerson if the three feet applies to a carport as an accessory structure? Mr. Wilkerson stated that

if it is just a carport it still has to be three feet away, but once it becomes attached it is five feet. The definition of carport in the Code is that the structure cannot have walls surrounding it; he does not know if the Permit Office would recognize the subject structure as a carport since it is attached to the principal structure.

Mr. Van De Wiele explained to the interested parties that there is a five-foot setback on the property, which certainly applies to the principal structure. If there are detached accessory structures, and this part of Tulsa typically has detached garages, those are generally in the back and they generally violate the rear yard setback and the side yard setback, and they can. Once those structures are attached to the principal structure, they no longer are detached accessory structures.

Rebuttal:

Scott Phlenz came forward and stated he cannot speak to the date the subject structure was built; his client told him that the carport had been there for 30 years. Currently, the structure sits about a foot off the north property line. When projected toward to the front of the house as shown on the site plan, it would be one foot off the line. If the carport were to be a detached structure it could certainly make the three-foot line work, and deal with the water runoff in a different manner. The approach to this project was to not change the nature of what exists and what has been there for a long period of time; to leave the structure as is but extend it forward. For engineering the footings, the next stage of the process would be to go to the Building Permit Office and have the structure engineered properly. The front porch portion, there was a Variance granted to extend the covered porch in front of the building line in 1995, and the property to the south is just behind the original building line. In the granted Variance in 1995, BOA-17169, the homeowner requested to go from a 30-foot setback to a 25-foot setback, which is what is being asked today.

Comments and Questions:

Ms. Ross stated she does not have an issue with the porch; she is a no for the carport. Her reason for the no on the carport is because if she lived there, she would be a very angry neighbor about the carport being right up against the fence. This is like asking for permission after the fact and now they want to make the carport bigger and higher and longer. This house was not built or designed to have a carport along the side. The homeowner had a garage and they chose to turn it into something else, which she has not issue with that. That does not mean the homeowner gets free reign to do whatever they want with the rest of their property if it is a violation of the Zoning Code and negatively impacts the neighbors.

Ms. Radney stated that she is not a no within the three feet of the property line. She thinks this would make a lot more sense if the carport were a port-cochere, that is in keeping with the style and era of the house. She can see the hardship in the way the water is flowing as the structure currently sits, however, she concurs with the rest of the Board she sees no compelling reason to make an exception for this structure. If the Board were looking at something that was designed more tastefully, she does not think the Board would have such hesitation about the project. Ms. Radney stated she cannot

support this request as written but is not a no per se on a carport or some sort of covering as long as it is within the three-foot setback.

Mr. Van De Wiele agreed with Ms. Radney. Mr. Van De Wiele stated that he thinks the front porch addition is a lovely addition and in keeping with the neighborhood. He thinks something like that could be carried around the corner and accomplish the goal of keeping water out of the light well without encroaching into the five-foot setback or three feet if it were detached. He would be a yes on the street setback Variance but barring some other plan that would be in front of the Board he would be a no on the side yard setback.

Ms. Back stated she cannot support the Variance for the side setback, but she loves what is proposed for the front porch.

Board Action:

On **MOTION** of **BACK**, the Board voted 4-0-0 (Back, Radney, Ross, Van De Wiele "aye"; no "nays"; no "abstentions"; Bond absent) to **APPROVE** the request for a Variance to reduce the street setback requirement in an RS-2 District (Section 5.030-A), subject to conceptual plans 9.25 and 9.26 of the agenda packet; and to **DENY** the request for a Variance to reduce the side setback requirement in an RS-2 District (Section 5.030-A). The Board has found the hardship for the approved Variance is the current development pattern within the subject neighborhood and the age of the neighborhood, and additional setback Variances that have been granted because of the age and the size of the neighborhood. The approval is limited to site plan 9.26 excluding the five-foot setback as shown. 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:

PRT LT 26 BEG NEC TH S15 W131.71 N12 E129.41 POB LESS BEG 7.48S NWC LT 26 TH E89 SE8 WLY97.64 WL N4.52 POB & ALL LT 27 BLK 3, TERWILLEGGER HGTS, City of Tulsa, Tulsa County, State of Oklahoma

22646—A-Max Sign Company

Action Requested:

Special Exception to allow a dynamic display sign in an R District (Section 60.050-B); Special Exception to permit a dynamic display sign to be located within 200 feet of an RS-3 District (Section 60.100-F). **LOCATION:** 11702 East 25th Street South. **(CD 6)**

Presentation:

Ryan Neurohs, 4132 East 41st Street, Tulsa, OK; stated he represents A-Max Sign Company and Tulsa Public Schools. There have been a number of these done for TPS over the last few years and they are a wonderful asset to the school district as well as the community. The sign will be programmed to automatically shut off at 9:00 P.M. every night and not to come on before 7:00 A.M.; TPS takes this very seriously.

Mr. Van De Wiele asked Mr. Neurohs if the new sign would be in the same location as the existing sign. Mr. Neurohs answered affirmatively.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **BACK**, the Board voted 4-0-0 (Back, Radney, Ross, Van De Wiele "aye"; no "nays"; no "abstentions"; Bond absent) to **APPROVE** the request for a Special Exception to allow a dynamic display sign in an R District (Section 60.050-B); Special Exception to permit a dynamic display sign to be located within 200 feet of an RS-3 District (Section 60.100-F), subject to conceptual plans 10.5, 10.6 and 10.7 of the agenda packet. The Board finds that the requested Special Exceptions 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:

S495 W880 E/2 NW SEC 17 19 14, City of Tulsa, Tulsa County, State of Oklahoma

22647 – Gabe Palacios

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: 621 South Kenosha Avenue East (CD 4)

Presentation:

Gabe Palacios, 1420 East 4th Street, Tulsa, OK; stated the business location is an abandoned building and used for storage for about 15 years; our charge is to go in there and revitalize and revamp the area. He has received his demolition permit and outcropping buildings have already been demolished to create more parking. Mr. Palacios stated that he has verified that there are no dispensaries within a 1,000 feet that are operational. He then applied to come before the Board for verification. Since that time and since he has applied for the permit the next-door neighbor has put up a sign that says there is a dispensary coming soon. He went back and looked at all the records and could not find where that neighbor has applied for a building permit nor a Certificate of Occupancy or any business license, though they do have an OMMA license for 806 East 6th Street under the name “Greenwood Wellness Dispensary, LLC”. Again, this is right next door, but they are not operational, and they have not submitted for a building permit nor a Certificate of Occupancy. Mr. Palacios stated that to him it seems he is first in line.

Ms. Radney asked Mr. Palacios if he knew when the Greenwood Wellness Dispensary license was issued. Mr. Palacios stated that OMMA does not give out that information. There is another dispensary within the zip code, and it is 1,800 feet away.

Mr. Van De Wiele asked Mr. Palacios to present his timeline. Mr. Palacios stated he submitted for an application for a permit on March 5th. The Letter of Deficiency (LOD) was received on April 3rd requesting a copy of the Board of Adjustment acceptance of separation. He then called the City to say he had verified the separation not realizing that he needed to come before the Board of Adjustment for verification. Had he known he needed to come before the Board he would have scheduled back in early April when he first submitted for a permit for construction.

Mr. Van De Wiele asked Mr. Palacios when he received his OMMA license. Mr. Palacios stated that he received it in January 2019. Mr. Van De Wiele asked Mr. Palacios when he saw the sign go up at the neighbor’s location. Mr. Palacios stated that it was Thursday.

Mr. Van De Wiele asked Mr. Palacios if he believed the neighbor has an OMMA license. Mr. Palacios answered affirmatively and stated that according to weed maps and his verification they do have an open dispensary, but it is located on North Apache. He thinks they have an office at this building and that they have applied for a permit with the 806 East 6th Street address, and was Thursday that they put up a sign on the

building with the same name as the North Apache establishment, but they are not operational at the 6th Street location.

Ms. Back asked Mr. Palacios if he is ready to open the doors. Mr. Palacios answered affirmatively and stated his client has already invested \$30,000. Ms. Back asked Mr. Palacios how soon would he be ready to open the doors. Mr. Palacios stated that it will be 90 days or less that the construction will be complete; it will be a 100% complete gut and redo with a new parking lot, new roof, new HVAC, new electrical, etc.

Ms. Radney asked Mr. Palacios if he would be able to open and operate his business if he were not going through the complete remodel of the subject building. Mr. Palacios answered affirmatively.

Ms. Ross asked staff what the word “established” exactly means in the finding that the Board recites in their motion. Mr. Van De Wiele stated that it is his understanding that INCOG is either working on or has an internal policy as to what that means. Mr. Swiney stated that there has been a conversation about a dispensary that is in operation but is not legally in operation. This case is a little bit different. The sign has gone up announcing that a competitor is going into operation but there is no dispensary that is active right now. The common-sense definition to “establishment” would be something that is up and running, something that is in operation, and that is how he would define it. Ms. Ross asked if that meant the doors were open. Mr. Swiney answered affirmatively. Mr. Van De Wiele stated that the applicant is gutting and remodeling and there is a facility right next door that needs no gutting, or a person could just pop up a card table and put some product out and say I am open for business, does that card table mean the person is established and now the applicant can be shut out because the card table established first? Mr. Swiney stated the competitor would have to have his or her 1,000-foot verification.

Ms. Back asked how the Board can protect the Tulsa citizens that are investing into their businesses? Mr. Van De Wiele stated there has always been this issue with billboards and the same thing with daycare centers and bars. Mr. Swiney stated that by the example, Mr. Palacios and his client better move fast to get established otherwise they are at risk. Ms. Ross stated she does not like that because Mr. Palacios is taking a building that needs investment and repair to be a business, and it is like they are being punished.

Mr. Van De Wiele stated this is a discussion that needs to take place, not necessarily related to this application.

Ms. Radney stated she is very uncomfortable that a transaction is required to be an establishment. When another verification was before the Board at the last meeting, it was discussed that when a person went to the State to receive their OMMA they had to have an address, and there is a date stamp on that, so there is at least legal right to claim a particular space or address. In her opinion, there should also be some sort of lease or purchase agreement that has been fully executed. To her the next step in

receiving a Certificate of Occupancy is about satisfying the City in terms of the ability to conduct business.

Mr. Swiney asked Ms. Radney if she was saying that Mr. Palacios and his client have done everything they need to do to begin. Ms. Radney stated that to conduct business under the auspices of the City of Tulsa, but as far as the State is concerned Mr. Palacios is entitled to do business because he has a license and an address. Mr. Van De Wiele stated that part of the problem is there have been instances of people getting OMMA licenses on addresses that they either don't lease, own or even have any intention of leasing. Ms. Radney stated that it is important to her that the applicant has something executed that says the person is entitled to occupy.

Mr. Wilkerson stated that any new dispensary in Tulsa is going to be a new use in context with the Building Permit Office. If everyone is playing by the rules, then they should come to the Board of Adjustment to receive their spacing verification before they start operating their business. Then it ends up in people asking for a Variance if someone had previously started their building permit application and received an occupancy permit, so there is an extra layer of protection at the Building Permit Office.

Mr. Swiney stated that the other scenario is if a competitor comes in and wants a 1,000-foot verification, in the same area, Mr. Palacios and his client would have notice of that and they can come to the meeting as an interested party. Mr. Van De Wiele stated that the problem is the notice is for a 300-foot radius.

Interested Parties:

Mario Freeman, 4108 North Lions Place, Broken Arrow, OK; stated he represents the Greenwood Wellness Group. The reason Greenwood put up the sign is because their license is from January 18th, so according to the rules there was no other qualifying contentions on Greenwood being able to get into the building. It is his understanding that it is who has the license first. Greenwood received their license on the 18th and the other party received theirs on the 29th. Mr. Freeman stated he already has an operating business, actually three businesses.

Ms. Radney asked Mr. Freeman if his license is for 806 East 6th Street. Mr. Freeman answered affirmatively. Ms. Radney asked Mr. Freeman if he had a license for the Kenosha facility. Mr. Freeman stated that he is not affiliated with the facility on Kenosha, but it is less than 200 feet from his 6th Street address. Ms. Radney asked Mr. Freeman the date he received his license for the 6th Street address. Mr. Freeman stated that it was January 18th.

Mr. Freeman stated he already has an established business model. He has over 150 patients a day at his current location, which is 1216 East Apache, so he has all the structural setups internally as well as being operational.

Ms. Radney asked Mr. Freeman if he had applied for his Certificate of Occupancy for the 6th Street address. Mr. Freeman stated that he has not, but he plans to do that

today, but he didn't feel that he had to because he already has multiple projects going on at one time and has his license for that location. Therefore, the Certificate of Occupancy was in his step two. His plan is to have this business operational which he can do by July 4th easily.

Ms. Ross asked Mr. Freeman if he had to receive a license for each location. Mr. Freeman answered affirmatively. Ms. Ross asked Mr. Freeman why it has taken so long. Mr. Freeman stated there are financial implications that go into these businesses therefore, this is phase 2 and the second location. He already has growing, and processing set up and felt no need once he received his license to do anything to the building on 6th Street. That building is owned by one of his partners.

Ms. Back stated that Mr. Freeman had not done his spacing verification. Mr. Freeman stated that he has not, but it is not a requirement. Ms. Back stated that by the Tulsa City Zoning Code it is a requirement. Mr. Freeman stated that it is a requirement to start the business, but it is not a requirement to have an operational business. Ms. Back stated that it is a requirement to apply to the City of Tulsa Board of Adjustment for the spacing verification, and to get the Board of Adjustment to accept the spacing verification, that is a part of the process. Mr. Freeman stated that is true, but to establish a business at a property according to the OMMA guidelines a person has to have a license so the next step is to do this process which, again, since he already has the license for the 6th Street property he can wait and that should be in his time frame whether we want to operate that property now or not.

Mr. Van De Wiele stated that no business can be operated without a Certificate of Occupancy. Mr. Freeman stated that once he received his license, even if he wanted to wait a year, he has a license for the property and no other dispensary should be able to operate within a 1,000 feet according to the rules.

Ms. Back informed Mr. Freeman that his application was in for the license not for the spacing verification with the City of Tulsa. It specifically states that the action of the Board being void should another medical marijuana dispensary be established prior to the establishment of this medical marijuana dispensary. So, there in lies the challenge, Mr. Freeman's phase 2 that he chose to put on hold has now complicated things for him because he does not have his spacing verification in before today's applicant. Mr. Freeman stated that at the time he read the rules he did not think that it was totally necessary. Mr. Freeman stated that he plans to open the 6th Street business by July 4th; everything is in place and it will require minimal setup and there is an operational plan in place.

Rebuttal:

Gabe Palacios came forward and stated that he thinks there are two separate things happening. The dates on the OMMA license are only significant in as much as a person has two dates, the pre-December 1st date and the dates beyond that which put everyone in the same ballpark basically. Beyond that a person gets into the City of Tulsa regulatory area which is what he is in right now. Now he has established himself

as the first to the table in that regard, which puts him in first place. It is his understanding that Mr. Freeman would have to seek a Special Exception or some other means or method to be able to open his business by July 4th. Mr. Palacios stated that Mr. Freeman cannot get a Certificate of Occupancy today, as he stated, because he has to come to the Board of Adjustment to receive the spacing acknowledgement and move forward from that point. Mr. Palacios stated that he and his client started this process in December 2018 and have already paid a significant amount of funds in architectural engineering fees, invested close to \$35,000 in demolition costs, the entire project scope is over \$500,000 to the building and the property, so there has been quite a lot of time and funds invested up to this point and are following every letter of the law and rule to have him standing before the Board today. Mr. Palacios hopes the Board will take that into consideration. Mr. Palacios stated that he does not think his client would have any objection to Mr. Freeman coming in later and applying for any kind exemption to allow him to operate on 6th Street. He thinks the free market economy is a good thing. Two people side by side operating the same kind of business encourages more business and traffic to the area. Mr. Palacios reiterated that having an OMMA license and the dates versus coming before the Board of Adjustment are two completely different things, and he is the first in line now in that regard.

Comments and Questions:

Mr. Van De Wiele stated that Board does need to address this from a City standpoint, and the only parallel that he can draw is the billboard situation. Before this it was the most single thing that the Board verified spacing for, and those have always been subject to being void if another billboard is constructed before your billboard is constructed. In the same line of thinking, he assumes there has to be a permit from Oklahoma Department of Transportation (ODOT) to erect a billboard on a highway, a person has to come to the Board of Adjustment and space it but that has never been the end of the equation. There has been only a few of these cases, but there has been a situation where billboard company A does all of that and for whatever reason and billboard company B comes in, gets their ODOT permit, gets their spacing from actual constructed billboards, and they company B gets their billboard built and causes the first billboard to be void even though they have spent money on a permit, on a spacing verification. Mr. Van De Wiele does not remember how far the Board went with it, but there actually was an attorney suggesting that the spacing ought to be from permitted location to permitted location. That decision was appealed to this Board, and we agreed with the appellant, the applicant, saying that the spacing should be from proposed location to actually physically constructed billboards. If that is an inappropriate parallel, he is ok with that, but it is the only one that he can think of. He is comfortable with the conclusion that he is drawing based on what is being presented from INCOG and City Legal that the medical marijuana dispensary business has not been established at the 806 East 6th Street location. He would vote to accept the spacing verification before the Board today.

Ms. Back agreed with Mr. Van De Wiele.

Ms. Radney and Ms. Ross stated they cannot concur with that. Ms. Ross stated she needs a concrete definition of what “established” means; it can be argued two different ways. There is the State licensing. There is the City process. Ms. Ross was concerned about someone not being able to open a business at a given address, then they are blocking somebody else from opening another business around that given address. Even if a person has a license and a deed or a lease and open business the next day, it takes time to get inventory; there is more to opening a retail space.

Ms. Back stated the Board can only govern and regulate by what is in front of them. The Board of Adjustment makes adjustments to the City of Tulsa Zoning Code based on what is given to them to govern by. This particular applicant is before the Board, has gone through the process, has made application for the spacing verification, has provided the Board with the verification that there is no other business within the 1,000-foot radius and actually disclosed to the Board that there has been a sign placed there. However, that entity has not made application per the Tulsa City Zoning Code to proceed in their path to establish their business. What is before the Board today is to verify that there is not another established, by the City of Tulsa Zoning Code, dispensary.

Ms. Ross stated that she thinks that the word “established” in the Zoning Code is the problem. It does not define what established means.

Ms. Back stated that is not what she is focusing on now, she is focusing on the fact that this person has been told by INCOG that they have to make application for spacing verification, and he has provided that while the other party has not. The Board should grant the applicant his spacing verification so he can move forward in the process because he is in a race right now.

Mr. Van De Wiele stated that today is May 28th, the idea of opening by July 4th is not a reality. The next application cut off date is June 6th and those applications will be heard July 9th.

Ms. Ross asked if the Board is saying that “established” means an entity is open for business? Ms. Radney stated that she does not agree with that. Mr. Van De Wiele stated that it may not be fair and that is why he is suggesting that INCOG and the City need to fix this. The Board is not drafting Ordinances. If a person is selling marijuana without a license, they are breaking the law. Ms. Radney stated that if the Board uses that threshold of a transaction, a transaction has occurred. In order to have a medical marijuana dispensary, at a bare minimum a person has to have an OMMA license, a Certificate of Occupancy which necessarily requires a person has legal right to be where they are, and that Certificate of Occupancy requires the spacing verification from the Board. Ms. Radney stated that her concern is, as it is written and without the interpretation the Board is asking for, the spacing verification is saying that both of these parties would need to go out and confirm that there is not an established business, a business that is any more or less established than they are, asking for the spacing. Ms. Radney thinks the Board is being asked to confirm that there is not an established

dispensary within the 1,000-foot envelope. Ms. Back stated that the Board is not being asked to confirm, they are being asked to accept.

Mr. Van De Wiele stated that one of the litany of things that the Board does, and it is not done very often, is to interpret the Zoning Code. At some point there needs to be a policy or a Board interpretation adopted. This is now two meetings in a row that this has come up, and in the last two weeks there probably has been ten dispensary spacings. This is only going to become more frequent and more of a problem. The Board needs an interpretation, and it has to start at the INCOG and legal level. These type of requests is always going to involve a race, and it is a race to what? Is it to the sale of the first unit of product? At some point it is just the inherent nature of doing business.

Ms. Ross stated that the Board needs from INCOG and or City Legal a definition as soon as possible, a tangible date of what "established" means.

Mr. Van De Wiele stated that the Board heard something similar two weeks ago, the Code says to verify that there is not another dispensary within 1,000 feet. That seems odd to him, but if he read that and he were new to zoning that might mean I would do a circle and look to see who is within 1,000 feet of my site. Mr. Van De Wiele stated that the Code may need some language clean up.

Mr. Swiney stated that in a verification of distance, unlike Variances and Special Exceptions, a verification of distance only needs two votes for a majority. If someone were to recuse or abstain from the vote, two votes out of three would be enough.

Board Action:

On **MOTION** of **BACK**, the Board voted 3-1-0 (Back, Ross, Van De Wiele "aye"; Radney "nay"; no "abstentions"; Bond 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 LTS 13 THRU 20 BEG NWC LT 13 TH E200 NEC LT 20 S85 SW TO WL LT 13 N110 POB BLK 7, BURNETT ADDN, City of Tulsa, Tulsa County, State of Oklahoma

Gabe Palacios came forward and asked about a possible scenario. In scenario one, out of his \$538,000 bid package he has completed \$300,000 of it and in those 45 days Mr. Freeman shows up trying to get a verification, there is a sign up that says "Coming Soon – To be open August 1st" what is the interpretation of "established" at that point? Mr. Van De Wiele stated that he does not want to give legal or City advice, frankly both Mr. Palacios and Mr. Freeman are at risk of a third unknown being in that circle. Mr. Van De Wiele encourages Mr. Palacios to reach to INCOG for if and when that issue comes up. Mr. Wilkerson stated that INCOG is well aware of the conflicts that occur,

and INCOG can make some interpretations but ultimately it will take a change in the Zoning Code.

Mario Freeman came forward and stated that he too has over \$300,000 invested in this matter. There are lists where a person can actually see every single dispensary that is in a particular zip code, go into INCOG and look at the distance between a person's proposed site and the next one. That is exactly what he did; that is how he knew Mr. Palacios was there and that is why he put the sign up.

22648—Tom Beverage

Action Requested:

Variance to allow a non-all-weather parking surface material (Section 55.090-F).

LOCATION: 5615 West Young Street North (CD 1)

Presentation:

Tom Beverage, TC Dirt Works, 8605 East 116th Street North, Owasso, OK; stated he is the General Contractor for the project. Young Street is the street that goes back to the property and it is a gravel road, and the Zoning Code states that the owner has to have a dustless all-weather surface. There was a trailer house on the property that burned down, and his client purchased the property and want to re-establish the house on the property. The original septic system will be used, but they are going to add a water tap off Young Street and not use the existing water well. The owner would like to have the same layout as what previously existed.

Ms. Back asked Mr. Beverage if it was a stick-built house or a mobile home? Mr. Beverage stated that it will be a stick-built house, pole barn style house.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **BACK**, the Board voted 4-0-0 (Back, Radney, Ross, Van De Wiele "aye"; no "nays"; no "abstentions"; Bond absent) to **APPROVE** the request for a Variance to allow a non-all-weather parking surface material (Section 55.090-F), subject to conceptual plan 12.8 of the agenda packet. The Board has found the hardship to be that this particular area is located in Osage rural area and the zoning is listed as agricultural, and that the street leading to the subject property is West Young Street and it is also a gravel surface. The house is to be a stick-built pole barn style built on the site. 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:

A tract of land in the W/2 NW/4 NW/4 of Section Twenty-Nine (29) Township Twenty (20) North, Range 12 East of the Indian Base and Meridian, Osage County, State of Oklahoma, described as:

The N/2 of the following described tract, to-wit:

Beginning 396 feet South of the Northwest Corner of Section 29, Thence East 330 feet; Thence South 330 feet; Thence West 330 feet; Thence North 330 feet to the Point of Beginning, City of Tulsa, Tulsa County, State of Oklahoma

OTHER BUSINESS

None.

NEW BUSINESS

None.

BOARD MEMBER COMMENTS

Mr. Van De Wiele asked Mr. Wilkerson about holding an internal meeting with the Board after meeting with City Legal regarding the medical marijuana dispensaries.

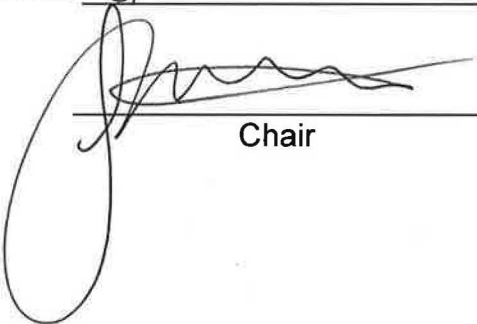
Mr. Swiney stated that it is perfectly appropriate for the Board to discuss this under Board Member Comments, but he would caution the Board about continuing the discussion after the adjournment.

Mr. Van De Wiele informed the Board and audience that this is Ms. Carolyn Back's last meeting.

Mr. Wilkerson informed the Board and audience that this is Ms. Amy Ulmer's last meeting, and Mr. Austin Chapman will be taking Amy's place in the box. Amy is staying with the Planning Office but taking a different position.

Mr. Van De Wiele, on behalf of the Board, thanked Amy for all she has done for the Board. Mr. Van De Wiele thanked Carolyn for that she has done for the Board and stated that it has been a pleasure to work with Carolyn.

There being no further business, the meeting adjourned at 4:20 p.m.

Date approved: 6/25/19


Chair